NEVADA STATE BOARD OF MEDICAL EXAMINERS

IN THE MATTER OF CHARGES AND COMPLAINT AGAINST

DAVID KAYLE MCCLEVE, PA-C

ADJUDICATION

Case No: 24-42281-1

Date: March 6, 2026

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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: **DAVID KAYLE McCLEVE, PA-C** **Respondent.**	**Case No. 24-42281-1**

FILED
NOV 22 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 David Kayle McCleve, PA-C (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 assistant holding an active license to practice medicine in the State of Nevada (License No. PA1526). Respondent was originally licensed by the Board on April 14, 2014.

2. Patient A[2] was a fifty-one (51) year-old male at the time of the events at issue.

3. On April 8, 2023, during his shift as an Emergency Department PA, Respondent injected Patient A with Botulinum toxin at a location within the emergency department at North Vista Hospital.

4. Patient A was not registered with North Vista Hospital at the time of the procedure and Respondent treated Patient A and performed the injection without the knowledge or permission

[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 Nick M. Spirtos, M.D., F.A.C.O.G., Ms. Maggie Arias-Petrel (Public Member), and Carl N. Williams, Jr., M.D., FACS.

[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.

of his employer Superior Emergency Physicians, North Vista Hospital, or emergency department staff.

5. Respondent did not have a supervising physician overseeing and ensuring his competence to perform cosmetic procedures at the time he injected Patient A with Botulinum toxin.

6. Respondent did not create any medical documentation of his care or treatment of Patient A prior to injecting him with Botulinum toxin.

7. Records show that on April 8, 2023, less than one (1) hour after the procedure, Patient A was found unresponsive in the North Vista Hospital parking lot. Patient A was wheeled into the emergency room in an altered mental state, intubated for airway protection, and transferred by ambulance to Sunrise Hospital for a higher level of care.

COUNT I

NRS 630.301(4) - Malpractice

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

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

10. 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."

11. 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 he injected Patient A with Botulinum toxin sometime during his emergency department shift at North Vista Hospital, did not conduct a medical examination or history, and failed to create any medical documentation related to his treatment of Patient A.

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

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COUNT II

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

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

14. 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.

15. Respondent did not document any part of the Botulinum toxin treatment he performed on Patient A. Thus, Respondent failed to maintain complete medical records relating to the diagnosis, treatment and care of Patient A in a timely, legible, accurate, and complete manner.

16. 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)(b)(2) - Violation of Standards of Practice Established by Regulation

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

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

19. NAC 630.340(2) prohibits a physician assistant from providing medical services until he has provided to the Board, on a form prescribed by the Board and signed by both the physician assistant and the supervising physician, and which also notes the portion of the practice of the physician assistant that the supervising physician supervises ("Supervision Agreement").

20. Respondent violated NAC 630.340(2) when he did not have a Supervision Agreement on file for the provision of the services described in paragraphs 3, 4, and 5 with the Board at the time he injected Patient A with Botulinum toxin.

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

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COUNT IV

NRS 630.306(1)(e) - Practice Beyond Scope of License

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

23. NRS 630.306(1)(e) provides that practicing or offering to practice beyond the scope permitted by law constitutes grounds for initiating disciplinary action.

24. Respondent practiced beyond the scope permitted by law when he injected Patient A with Botulinum toxin at a location within the emergency department at North Vista Hospital because he was not authorized by his supervising physician to provide such treatment. *See* NRS 630.271.

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

WHEREFORE, the Investigative Committee prays:

1. That the Board give Respondent notice of the charges herein against him and give 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;

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

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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 21st day of November, 2024.

INVESTIGATIVE COMMITTEE OF THE
NEVADA STATE BOARD OF MEDICAL EXAMINERS

By: Deonne E. Contine

DEONNE E. CONTINE
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VERIFICATION

STATE OF NEVADA)
: ss.
COUNTY OF CLARK)

Nick M. Spirtos, M.D., F.A.C..OG., 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 21st day of November, 2024.

INVESTIGATIVE COMMITTEE OF THE
NEVADA STATE BOARD OF MEDICAL EXAMINERS

By: _____

NICK M. SPIRTOS, M.D., F.A.C.O.G.
Chairman of the Investigative Committee

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BEFORE THE BOARD OF MEDICAL EXAMINERS OF THE STATE OF NEVADA

* * * * *

In the Matter of Charges and Complaint Against

DAVID KAYLE MCCLEVE, PA-C,

Respondent.

Case No.: 24-42281-1

FILED

NOV 26 2025

NEVADA STATE BOARD OF MEDICAL EXAMINERS

By:

TO: Sarah Bradley
Deputy Executive Director
Nevada State Board of Medical Examiners
9600 Gateway Drive
Reno, Nevada 89521

David Kayle McCleve, PA-C
c/o Lisa Zastrow, Esq.
9900 Covington Cross Drive, Ste 210
Las Vegas, NV 89144

FINDINGS AND RECOMMENDATIONS

The above-referenced matter came for hearing on September 17, 2025, and was conducted remotely via the Zoom application by consent of the parties. The Investigative Committee of the State of Nevada Board of Medical Examiners was present and represented by Sarah Bradley, Esq. (the "IC"). Also present was David Kayle McCleve, PA-C, referred to throughout the hearing by his legal counsel as "Kayle" ("Respondent"), as was his legal counsel Lisa Zastrow, Esq.

The charges at issue are set forth in a Complaint filed on November 22, 2024, and consist of Count I, Malpractice, a violation of NRS 630.301(4), premised upon the allegation that Respondent failed to use the reasonable care, skill, or knowledge ordinarily used under similar circumstances when on April 8, 2023, he injected a patient with botulism type A (referred to herein as "Botox") sometime during his emergency department shift at North Vista Hospital, did not conduct a medical examination or history, and failed to create any related medical

documentation; Count II, Failure to Maintain Complete Medical Records, a violation of NRS 630.3062(1)(a), premised upon the allegation that Respondent failed to maintain complete medical records relating to the diagnosis, treatment, and care of a patient in a timely, legible, accurate and complete manner; Count III, Violation of Standard of Practice Established by Regulation, a violation of NRS 630.306(1)(b)(2), premised upon the allegation that Respondent undertook to administer Botox without having a supervisory agreement on file with the Board; and Count IV, Practice Beyond Scope of License, a violation of NRS 630.306(1)(e), premised upon the allegation that Respondent acted outside the scope of his license by injecting Botox without the authorization of his supervising physician. T2 22.

The hearing commenced with Respondent requesting reconsideration of the September 12, 2025, Order Denying Motion in Limine to Exclude Testimony of Johnna LaRue, Ernesto Diaz, Kory Linn, and Stephanie Elmquist, PA-C. Transcript of Hearing Proceedings, September 17, 2025, pp. 7-16 ("TR"). Respondent then sought to preclude IC witness testimony by alleging that the IC failed to summarize witness testimony as established by NAC 630.465 and/or NRS 622A.330. That motion was also denied. TR 16-29.

Opening statements were then given and the parties moved to testimony commencing with the IC's case. The IC called Ernesto Diaz, the Chief of Investigations of the Nevada State Board of Medical Examiners who addressed his professional experience and his experience with this matter. T 43-48. By and through Mr. Diaz, Exhibits 1-4, 8-9 were admitted. T. 48-62.

On cross-examination, Respondent inquired about a peer review report, which is part of the investigative file not relied upon by the IC for the hearing and was addressed in that context and in light of its confidentiality. T. 63-68. Respondent then inquired about the allegation letter, Exhibit 1, the testimony regarding which addressed that the allegation letter did not inquire about Respondent practicing outside the scope of his supervision, nor did the IC take further action to inquire about the specific medical spa Respondent claimed to be working for. T 69-76, 80-81, 91. Exhibit 5 was then admitted. T 79. Timing of the formal complaint was then inquired about, as were allegations in the formal complaint, particularly concerning the allegations of the patient being found unresponsive outside of the hospital shortly after Respondent had administered the

Botox injections, with clarification by counsel that the Patient's subsequent condition was not a result of the actions taken by Respondent. T 82-108. On redirect, the IC addressed the allegation letter and its scope. T 114-119.

The IC next intended to call Johnna LaRue, which prompted the admission of Exhibits 6 - 7 by stipulation. T 122-125. Ms. LaRue was then called by the IC and she testified as to her position with the IC as its Deputy Chief of Investigations, followed by testimony of her professional experience. T 125-127. Ms. LaRue further addressed the allegation letter and its response (Exhibits 1 and 2), followed by testimony regarding Dr. Harris' supervision of Respondent, which was limited to emergency department services that did not encompass Respondent's administration of Botox at the hospital (*see* Exhibit 6). T 128-132.

On cross-examination, Respondent inquired about his supervision agreements (*see* Exhibit 7) and Ms. LaRue' knowledge of another pending matter, discussion of which was limited. T 133-140. On redirect, Ms. LaRue acknowledged that physician assistants can have more than one supervising physician, and that such supervision is subject to an address of the location where the physician's assistant is being supervised. T 142-143. On re-cross, Ms. LaRue was asked about Dr. Sheep failing to contacted the Board about "leaving My Shape Lipo," the location of which is the address provided on Respondent's supervising agreement with Dr. Sheep. T 143-144.

The IC's next witness was Stephanie Elmquist, a licensed physician's assistant who practices in emergency medicine and who testified as to her professional background as reflected in Exhibit 9, which had been admitted. T 148-153. Ms. Elmquist testified that Respondent did not meet the standard of care because he failed to appropriately document the medical treatment of the patient, inclusive of failing to document the patient's history; undertook an unauthorized cosmetic procedure in the hospital emergency room; and performed outside the scope of his emergency room supervisory agreement. T 156-175. As to supervision, Ms. Elmquist testified that, while Respondent had an emergency room supervising physician, the physician that was to be overseeing Respondent for cosmetic procedures had not realized he was still to be supervising Respondent and that performing the cosmetic procedure at the hospital emergency room went beyond the scope of his emergency room duties. T 176-177.

On cross examination, it was established that a physician's assistant is able to perform the work permitted by their supervising physician. T 178-177. Respondent then utilized questioning to contrast emergency room procedures with the comparatively simple task of injecting Botox. T 180-181, 201-202. Questioning was then posed regarding Respondent's supervision agreement with Dr. Sheep, covering the time within which Respondent undertook the Botox injections, which was on April 8, 2021, and related circumstances – that being Respondent's understanding that he and Dr. Sheep would commence a cosmetic treatment partnership. T182-184, 195-196. With respect to the Botox treatment in particular, Ms. Elmquist testified that it was impossible to know whether its administration fell below the applicable standard of care because no records were made in relation thereto, although Respondent attempted to paint his report to the emergency room physician given after the patient was found in the hospital parking lot unresponsive as a medical report. T 185-194, 197-201, 205-209, 242-244. Ms. Elmquist further testified she was not aware that Respondent was supervised by a Doctor of Osteopathy, had not reviewed any records in relation thereto, and that she was not testifying that the patient suffered any adverse reaction from the Botox. T 212-218.[1]

On redirect, Ms. Elmquist reiterated that without records to review, proper treatment of the patient cannot be determined, so one could not say how the patient was treated, which falls below the standard of care. T 239-240. In that same vein, Ms. Elmquist further testified that she could not emphatically state that the situation constitutes malpractice because she cannot definitively determine what happened but that such actions were unreasonable in consideration of the fact that the injections were done in a location where they were not sanctioned and Botox was administered to a patient that was not registered and no records were made, which could be deemed malpractice, and which was reframed on re-cross to be a conclusion of malpractice based

[1] Paragraph 7 of the formal Complaint, filed on November 22, 2024, provides, "Records show that on April 8, 2023, less than one (1) hour after the procedure, Patient A was found unresponsive in the North Vista Hospital parking lot. Patient A was wheeled into the emergency room in an altered mental state, intubated for airway protection, and transferred by ambulance to Sunrise Hospital for a higher level of care." Despite the implication of the paragraph, Patient A's condition was not attributed to Respondent or the Botox he administered (*see* Exhibit 8). T 103-108, 219. Questions were also posed regarding Respondent being supervised by a Doctor of Osteopathy but no evidence regarding any such supervision was presented and questions of counsel are not evidence. T 233-37

upon a lack of record keeping. T 248-256. It was further confirmed on re-cross that Ms. Elmquist does not have training in cosmetic procedures. T 256-260.

Testimony recommenced the following day, at which time the IC called Respondent to testify. Trial Transcript, September 18, 2025 ("T2"). Respondent testified that he has been licensed as a physician's assistant in Nevada since 2014, and was licensed in Arizona prior. T2 9. Respondent testified that his licensing with the Board of Osteopathic Medicine expired on December 31, 2022. T2 10. Respondent testified to the accuracy of his representations in his response to the Board's allegation letter as provided at Exhibit 2. T2 10. Respondent admitted to there being no formal business agreement with Dr. Sheep or a medical spa owner when he was called to provide cosmetic services to a "VIP" client of a medical spa that was not identified in his response letter. T2 9-10. In addressing his ability to do so, Respondent testified that Dr. Sheep had already signed a supervising agreement that was on file with the Board. T2 11. Respondent also suggested he has medical notes about the procedure in the medical spa's EMR system and had notes and photographs in his phone, which included pictures of the vial, the lot number, his "mental notes of what actually transpired," and how he administered the Botox. T2 11, 13. Notably, no such records were ever formally produced, and Respondent says he never offered them even though they were requested in the allegation letter, which Respondent submitted without formal counsel (although two attorneys, including Respondent's current legal counsel, were carbon copied on the email). T2 11-13, 15-16, 72-73, 75.

At the time at issue, Respondent had supervising agreements on file with Dr. Sheep and Dr. Harris, who supervised Respondent in the emergency room of North Vista Hospital. T2 16-17, 21, 23, 155, 164. Respondent was aware of an address for services on his supervisory agreements but attempted to justify working outside the identified address by testifying that he was working on a new business venture with Dr. Sheep and a new address had not yet been established. T2 18, 184.

Respondent sought to clarify that Dr. Sheep was not his supervisor at North Vista Hospital where he administered the Botox to the patient, but that Dr. Sheep had authorized Respondent to act under Dr. Sheep's license and supervision at any medical spa at any location based upon them

developing a "non-traditional business model" where they go into medical spas to provide cosmetic care. T2 19-20, 22, 29. To that end, it was Respondent's testimony that he undertook the Botox procedure at issue at North Vista Hospital in accordance with the supervisory agreement with Dr. Sheep. T2 25-26.

As to monthly meeting requirements for physician supervision as provided for by NAC 630.370, Respondent testified that he satisfied the requirement of meeting with Dr. Sheep once a month by and through their ongoing communication but did not satisfy the select chart review requirement because the patient at issue was their first, although the requirement had been satisfied prior with respect to other work at My Shape Lipo. T2 32-34, 84-87.

Respondent testified that Dr. Sheep, who is board certified in emergency medicine and has a certification with respect to tumescent liposuction, was aware that Respondent was providing the services at issue based upon their longstanding agreement that Respondent could provide cosmetic services under Dr. Sheep's supervision. T2 35-36.

With respect to Respondent's background, in addition to his training that he testified to at T2 38-39, Respondent testified that he had worked in emergency medicine, dermatology, liposuction, and currently works in orthopedic spine surgery and pain management. T2 39. Respondent also testified that he has several current certifications (T 39-40), and that he has trained with a cosmetic surgeon and other doctors that provide cosmetic services. T2 41-42.

Respondent concedes that inviting a patient to a hospital to receive cosmetic injections is "not normal" and was against hospital policy but states that the care provided was reasonable under the circumstances, testifying that there was no meaningful distinction between the hospital and a medical spa in terms of location. T2 54-58, 64. Respondent confirmed that he is trained to administer Botox and testified that when he was working in dermatology he administered Botox daily and has done so throughout his career intermittently but had not done Botox procedures since 2017. T2 58, 60-61.

Respondent maintains that the notes he put in his phone, which were never formally produced and admitted, are applicable records but testified that he is unsure if they meet the appropriate record keeping standard even though he deems them complete. T2 66-68.

Respondent articulated the requirements for complete records, which expanded well beyond the information he stated he entered on his phone and indicated that the "appropriate disclosures" had been handed by the medical spa owner who referred the patient. T2 69-71, 207-209. Respondent also emphasized that he gave pertinent related information to Dr. Clark when the patient was admitted after having been found unresponsive in the parking lot. T2 72-73.

The IC questioned Respondent regarding Exhibit 10, which was admitted and was an email between Respondent and the IC, dated March 17, 2023, that addressed the sharing of vials of Botox, which Respondent says he sent the Board prior to the incident at issue in an effort to seek clarification. T2 78-83. The IC also asked Respondent if he had submitted any documentation evidencing his qualifications to administer Botox, to which Respondent stated the IC has his CV from another case. T2 83-85. Respondent further testified that he had discussed the patient at issue with Dr. Sheep "within a couple of days," and clarified that Dr. Sheep had not authorized him to inject Botox at any specific location as opposed to authorizing him to inject Botox in medical offices, presumably medical spas that Respondent was in talks with. T2 88-89. As to supervision for injecting Botox on the occasion at issue, Respondent testified that Dr. Sheep was not supervising him that day in his capacity working in emergency medicine but was supervising him with respect to carrying out the Botox procedure. T2 89-90. In response to follow up by the IC, Respondent acknowledged that Dr. Sheep does not have privileges at North Valley Hospital where Respondent undertook the Botox injections but maintained that, nonetheless, he was being supervised by Dr. Sheep and reference was made by the IC to Exhibit 7, which demonstrates dates of association with supervising doctors. T2 88-93.

On cross-examination, Respondent inferred that Exhibit 10, the March 17, 2023 email with the Board regarding the sharing of a Botox vial, should have demonstrated to the Board that Respondent was performing or was going to be performing cosmetic procedures and that the Board should have let him know if that was problematic. T2 96-97. Respondent then explained that he is frustrated with the IC because he admitted to and had been punished for violating hospital policy for injecting the patient with Botox during his emergency room shift at the hospital. Respondent also testified that he acknowledged poor record keeping (admitting to it at

T2 131-132) and, therefore, does not believe the other counts alleged are warranted given the care he delivered "was on point." T2 97-109.

With respect to his experience "administer[ing] paralytics," Respondent testified he had undertaken injections prior to this incident "hundreds, maybe thousands of times" and that he is "well-versed with Botox." T2 109-110, 126-127. Respondent then turned his attention to Exhibit 4, which is a letter by Dr. Sheep by which Dr. Sheep wrote that he had not supervised Respondent since October 1, 2021. According to Respondent, Dr. Sheep's statements made therein are inaccurate, although specific statements were not addressed. T2 110-112.

Respondent then addressed Exhibit 2, which was his response to the IC's allegation letter, testifying that it was his intent to be fully transparent, and it was his hope to start a business providing services to medical spas as supervised by Dr. Sheep, who had supervised Respondent when he did liposuction with My Shape Lipo. T2 112-113. According to Respondent, what prompted him to inject Patient A with Botox was a call from a medical spa owner whom he was hoping to forge a relationship with and who had asked Respondent to assist with the Botox injections on an urgent basis. Unable to access the medical spa, Respondent went to his shift in the emergency department at North Vista Hospital, after which the patient called him and asked if Respondent could inject the Botox in the parking lot, upon which Respondent directed the patient to come to the hospital where Respondent took him into the emergency room and administered the Botox. Although the patient offered to pay Respondent $2,000, Respondent states he did not accept. T2 123.

Approximately forty-five minutes later, the patient had "a reaction" and went back into the hospital where the patient was treated by Dr. Clark, whom Respondent then reported to about the Botox injections. T2 116-118. Respondent indicates that he went through "an entire medical encounter" and asked the patient "all of the screening questions necessary" prior to administering the Botox. T2 118. According to Respondent, he injected the patient with 50 units and kept a picture of the vial. T2 119-120.

For having performed the Botox procedure on the patient at the hospital, Respondent lost his job, the basis for which was violating hospital policy. T2 123. Respondent maintained that

medically what he did was fine but ethically it was not. T2 125. To reiterate, the Board should understand that the patient is not believed to have suffered an adverse reaction because of the Botox. T2 126, 129-130, 160-61 (*see* ftn 1).

Respondent again testified that he injected the patient with Botox pursuant to his supervision agreement with Dr. Sheep. T2 141-142. As far as Dr. Sheep's qualifications to supervise him for the Botox administration, Respondent testified that Dr. Sheep had indicated that he was proficient in the procedures that were intended to be performed under the umbrella of "boutique medicine." T2 145-146. Respondent also testified that Dr. Harris knew he worked outside the emergency department under the supervision of another physician as acknowledged in Exhibit 5. T2 156-157. Further, according to Respondent, he did not need Dr. Sheep's permission to administer the Botox to the patient. T2 166-167, 183.

On redirect, Respondent testified that the patient's recreational drug use, which the patient had admitted to prior to the Botox administration, had no bearing on whether it was appropriate to administer Botox to the patient. T2 188-191, 203, 211.

The IC's next witness was Kory Linn, the Chief of Licensing for the Board who testified as to the supervisory agreement form. T2 213-218. Ms. Linn then addressed Dr. Sheep's supervisory agreement, Exhibit 7, testifying that it has an association date of March 16, 2021, and a disassociation date of June 27, 2023. The blank supervisory form with cited statutory authority that had been used for reference was then admitted as Exhibit 11. T2 218-221.

On cross-examination, Ms. Linn testified that the supervisory form is what is required for a physician's assistant to be linked to a physician in the Board's system (T2 226); that the form does not indicate the scope of services being supervised (T2 228); that Respondent was licensed (T2 229); that the scope under which a physician's assistant works is determined by the physician (T2 230-232); and that Respondent had a supervision agreement at the time at issue with both Dr. Harris and Dr. Sheep (T2 232). On redirect, testimony was elicited regarding the location of services as indicated on the supervisory form. T2 233-234.

The last witness called was Dr. Andrew Sheep who was called by the IC in rebuttal to Respondent's testimony. T2 235-244. Dr. Sheep testified that he is employed by Team Health,

has been licensed in Nevada since 2019, and that he practices in emergency medicine. T 244-245. Dr. Sheep identified Respondent as a friend and someone who he had worked with and spoke with about doing esthetic procedures together. T2 245. Dr. Sheep also testified that he had never supervised Respondent with respect to emergency medicine. T2 245.

As for the supervisory form, Dr. Sheep testified that for other physician assistants he supervises, he would usually list Sunrise Hospital and Medical Center for the location of services but could not recall the location he had listed for Respondent, although he did recall that the location as not North Vista Hospital. T2 248-249.

The IC next inquired of Dr. Sheep regarding Exhibit 4, which Dr. Sheep testified was accurate, and that any services performed by Respondent after October 1, 2021, would not have been authorized under Dr. Sheep's supervision. T2 250, 256. Per Dr. Sheep he spoke with Respondent after October 1, 2021, but not in a "professional manner," so he was not meeting with him to review charts and had not spoken with him about the incident at issue until after it took place. T2 249-250, 252. Although the supervisory agreement between Dr. Sheep and Respondent was still on file and had not been terminated as of the date at issue, Dr. Sheep testified that it was his understanding that after October 1, 2021, Dr. Roberts would be supervising Respondent and that he had not met with Respondent thereafter in a supervisory capacity.[2] T2 252-253. The supervisory location for Respondent per Dr. Sheep was at My Shape Lipo and possibly some other medical spas but that would have been prior to October 1, 2021, and only the My Shape Lipo address is listed – *see* Exhibit 12. T2 253-255. Dr. Sheep's supervision was limited to what was provided for "on the credential list" but no "credential list" was made part of the record. T2 255.

Exhibit 12, which was Dr. Sheep's supervisory agreement for Respondent was marked and admitted, with respect to which Dr. Sheep testified that the location for services was not North Vista Hospital and that he would have never authorized Respondent to perform a cosmetic

[2] In Exhibit 4, Dr. Sheep writes that he was unaware as of October 1, 2021, that a physician's assistant could have more than one supervising physician and, therefore, assumed that when Dr. Roberts began to supervise Respondent, Dr. Sheep's supervisory agreement would no longer be effective.

procedure there. T2 258-263. Dr. Sheep also testified that the address on the supervisory agreement was neither of the medical spas where he had supervised Respondent prior (although that does not appear to be accurate because the address on the supervisory agreement is for My Shape Lipo, a medical spa that Dr. Sheep had testified just prior was a location where he supervised Respondent), and that he formally terminated the supervisory agreement on June 14, 2023, when he learned that he was still listed as a supervising physician. T2 264. Dr. Sheep further testified that he did not recall if he had a conversation with Respondent about terminating the supervisory agreement as opposed to merely discussing the fact that he was leaving My Shape Lipo. T2 265-267, 280.

On cross-examination, Dr. Sheep acknowledged that he was required to give notice to the Board of when he was no longer supervising Respondent. T2 274-275. Dr. Sheep acknowledged discussing doing esthetic procedures with Respondent and had previously worked with Respondent at multiple locations. T2 275-279, 280-281. Dr. Sheep reiterated that he did not know he still had a supervisory agreement for Respondent on file and repeatedly stated he did not recall reminding Respondent that the supervisory agreement was still on file when they were discussing working together to do esthetic procedures, with respect to which they had also met with some medical spa owners. Despite denying having spoken about the supervisory agreement with Respondent, Dr. Sheep nonetheless testified that he would have no reason to disagree with Respondent if Respondent had believed the supervisory agreement to have still been on file at the time at issue. T2 279-284.

Dr. Sheep acknowledged that a physician's assistant could act as authorized by a physician and was not subject to constant supervision. T2 285-286. According to Dr. Sheep, Respondent is an excellent physician's assistant, as a result of which Dr. Sheep assisted Respondent to obtain work and he believed Respondent to be trained in neurotoxins. T2 287-288.

On redirect, Dr. Sheep testified that he had been talking with Respondent about a venture into boutique medicine but such conversations were not in a supervisory context, and that Respondent injecting Botox in a hospital emergency department to a patient that was not

registered was not reasonable. T2 289-292. On re-cross, Dr. Sheep acknowledged he was not asked to consider the standard of care in terms of the actual treatment. T2 293-297.

In responding to questioning by the undersigned, Dr. Sheep testified that he knew Respondent was working towards establishing a boutique medicine business venture but was unaware that Respondent was going to start or had started providing cosmetic procedures, and the first he learned of it was after the fact in relation to the Botox injections at issue. T2 295-299. Per Dr. Sheep, the Botox injections Respondent undertook were not under his supervision and he was not aware that the supervisory agreement was still on file or that Respondent was going to commence undertaking esthetic procedures. T2 299. Lending to Dr. Sheep's understanding was the fact that Dr. Sheep was not meeting with Respondent on a regular basis nor in a supervisory capacity and, to that end, it would not have been reasonable for Respondent to believe he was still subject to Dr. Sheep's supervision. T2 302, 311-313. However, upon further questioning by Respondent, Dr. Sheep stated that it was possible that Respondent believed Dr. Sheep was still his supervising physician even though Dr. Sheep himself did not believe so. T2 304-306, 310. Upon final questioning from the IC, Dr. Sheep testified that he was willing to supervise Respondent for esthetic procedures but no formal workings for the business venture contemplated had been finalized. T2 311.

With the consent of the IC, Respondent once more testified, stating that in the spring of 2023, he and Dr. Sheep agreed to move forward with a "boutique thing" with Dr. Sheep supervising him to be able to administer Botox. T2 317. According to Respondent, it was Dr. Sheep who stated that it would work out to move forward given that the supervisory agreement with Dr. Sheep was still in effect, and the lack of chart review was attributable to the fact that the patient at issue was the first patient Respondent undertook to inject with Botox under the contemplated business agreement and that Respondent did so in an attempt to establish good will with the medical spa owner who referred the patient. T2 317-320. According to Respondent, Dr. Sheep was aware that he was Respondent's supervising physician for the Botox injections based upon their business plan and prior discussions, and that Dr. Sheep's cooperation with the IC is premised upon Dr. Sheep himself being subject to a Board investigation. T2 320-321.

Closing statements were given remotely on Monday, September 22, 2025, and were likewise transcribed. In summary, the IC argued that the business venture discussed between Dr. Sheep and Respondent had not been formalized and, therefore, putting aside the problems with injecting the patient with Botox at North Vista Hospital while on an emergency room shift, it was unreasonable to perceive the supervisory agreement as being applicable, particularly when Dr. Sheep was not aware that Respondent had commenced to provide esthetic services. The IC argued that no medical records as required to be maintained had been created, and that Respondent's judgement was so bad as to constitute medical malpractice in having undertaken the Botox injections at the hospital, the location of which was not listed in the supervisory agreement, and having failed to create required documentation in relation thereto. As for Count IV, practicing beyond the scope of a license, the IC argued that the premise of the count was that the Botox injections were not authorized by Dr. Sheep, having acknowledged that Respondent had performed such procedures in the past and "so maybe there's not concerns like his competence or how he might perform them." T3 24.

Respondent, in closing, took issue with the IC's motivation and the manner in which the case was pleaded, and argued that Respondent had conceded the records violation although some records had been made and pertinent information had been provided by Respondent when the patient was formally admitted to the emergency room for reasons unrelated to the Botox injections. Respondent takes issue with the malpractice count, arguing that it applies to a physician and not a physician's assistant but that, regardless, the actual administration of the Botox was not below the standard of care. Respondent addressed the supervisory agreement and how it was in place with Dr. Sheep for supervision of cosmetic procedures, having originally been for liposuction and was believed to be still in effect by Respondent, and Respondent emphasized his ability to perform Botox injections. Respondent further argued that the IC is commingling allegations to bolster counts that are not supported by the legal standards that apply to them and takes issue with disciplinary options that the IC deems to be applicable.

The crux of this matter is that Respondent, on his own accord and without the knowledge of his purported supervising physician, administered Botox to a patient at a location that he should

not have and, in relation thereto, failed to create relevant medical records. The dispute as to the charges by the IC in relation thereto rests with how such action falls within the counts pleaded by the IC.

Count II, Failure to Maintain Complete Medical Records, a violation of NRS 630.3062(1)(a) is undisputed and supported by the lack of medical records created. *See, e.g.* T3 p. 40 (Respondent's counsel: "Mr. McCleve admitted to the records violations . . ."). Given the admission of the violation of Count II, Respondent should be held accountable for the same and undersigned will address the remaining counts, commencing with Count I, Malpractice, a violation of NRS 630.301(4).

As an initial matter, NRS 630.301(4) provides that malpractice of a physician's assistant is grounds for initiating disciplinary action. It is the definition of malpractice at NAC 630.040 with which Respondent takes issue given that the definition as of April 8, 2023, when the action at issue was taken by Respondent, refers to a physician in particular. That said, NAC 630.040 was amended as reflected by LCB File No. R171-20, filed on June 2, 2023, to specifically include a physician's assistant in the definition of "malpractice." To the extent that definition was amended after the incident at issue to include all regulated health care providers including, but not limited to a physician's assistant, the applicable definition of malpractice itself was nonetheless unchanged and remained the failure in treating a patient to use reasonable care, skill, or knowledge ordinarily used under similar circumstances. *See also* NRS 41A.015, which defines "professional negligence" as the failure of a health care provider, in rendering services, to use the reasonable care, skill or knowledge ordinarily used under similar circumstances by similarly trained and experienced providers of health care.

With that, the inquiry rests upon the *treatment* of Patient A. As testified to by Ms. Elmquist, she was unable to address malpractice as to Respondent's actual treatment because of his lack of record keeping. However, evidence of malpractice does not always rest in records but is also evidenced in subsequent adverse reactions or harm suffered by a patient. Here, the adverse condition of Patient A was not related to the Botox injections administered by Respondent as was

addressed on the record and reflected in Exhibit 8. Thus, there was no evidence to demonstrate that the harm suffered by Patient A derived from Respondent's treatment.

Perhaps to overcome this, the IC's pleading of the malpractice count focused on the setting where the Botox was administered, the allegation that Respondent did not conduct a medical examination or history, and the fact that Respondent failed to document his treatment by creating related medical records. While the location where the Botox was administered could go to treatment, NRS 629.086 permits the administration of Botox at a "medical facility," and NRS 449.0151 specifically includes a hospital in the definition of a "medical facility." As such, a finding of malpractice cannot appropriately rest on Respondent having administered the Botox at the hospital. That is not to say that it was appropriate for Respondent to do so. To the contrary, it was completely inappropriate for all the reasons argued by the IC and Respondent was fittingly fired for it. However, it remains that the hospital is a medical facility and Respondent indicated that he "prepared a location within the hospital" to administer the Botox and, as such, the location itself does not properly subject Respondent to a finding of malpractice. *See* Exhibit 2.

With respect to the IC's allegation that Respondent failed to conduct a medical examination or history, Respondent testified and indicated in Exhibit 2 that he undertook a proper medical screening. T2 118, 189; Exhibit 2. While his statements as to such could be deemed self-serving, there is no evidence to contradict his testimony and there is no reason to believe that he did not actually do so, particularly given the specifics described by Respondent as to what was divulged by the patient as to prior drug use. Such information was reflected in Exhibit 8 and would necessarily have been conveyed by Respondent given that Patient A was unresponsive and the urine drug screen result was normal and negative for illicit drug use.

The last basis the IC pleads in support of its malpractice claim is that Respondent failed to create any medical documentation related to his treatment of Patient A. While that is true, that does not go to Respondent's actual treatment and is encompassed within Count II, which Respondent has admitted to. Thus, based upon the foregoing considerations, I cannot recommend a finding of malpractice; although, at first blush, to paint Respondent's actions as such is seemingly appropriate.

Count III is for the alleged violation of a standard of practice established by regulation and is premised upon Respondent not having a supervision agreement on file that would allow him to undertake the Botox injections he administered to Patient A. Unfortunately, this issue is murky and Dr. Sheep failed to shed much light on it. Whether that was by design on Dr. Sheep's part given concern about his own licensing, loyalty to Respondent whom he considered a friend once faced by Respondent during his testimony, or for any other number of possible reasons, it remains that Dr. Sheep's testimony was not entirely consistent with his statements in Exhibit 4 nor definitive as to he and Respondent's contemplated boutique medical endeavor.

Although Dr. Sheep was clear that he did not lead Respondent to believe that he was to supervise Respondent with respect to cosmetic procedures, Dr. Sheep vouched for Respondent's credibility and said he could not refute Respondent's understanding to the contrary. Dr. Sheep also substantiated Respondent's ability to administer Botox. It also makes little sense that the two would be in discussions to pursue a cosmetic practice partnership if Dr. Sheep would not be Respondent's supervising physician in relation thereto. That said, there was no formal business plan or agreement between the two, and Dr. Sheep was unaware that Respondent had commenced cosmetic procedures.

With little definitive testimony, what is irrefutable is that there was a supervisory agreement on file between Dr. Sheep and Respondent effective April 8, 2023, when Respondent administered the Botox to Patient A, and there was no basis established from which to conclude that a prior address listed on the form was fatal to its purpose. Given the complaint pleads the count on the premise that no such supervision agreement was on file, and in consideration of the ambiguous testimony that precludes a finding by a preponderance of the evidence, undersigned cannot recommend a finding that Respondent violated Count III.

Count IV, practice beyond the scope of license, is premised upon Respondent not being authorized by Dr. Sheep to administer Botox to Patient A. It is evident that Respondent and Dr. Sheep had contemplated a business arrangement that would encompass the treatment Respondent provided to Patient A; however, Dr. Sheep made it clear that he was unaware that Respondent had any intention to commence actually undertaking cosmetic procedures as of April 8, 2023, and

Respondent himself acknowledged that he administered the Botox at the behest of a third party or parties and only in anticipation of a formal business agreement eventually being undertaken. In addition, Respondent only informed Dr. Sheep of the treatment after it was undertaken. As the IC argued, Respondent "jumped the gun." Having a supervisory agreement on file is one thing, but presuming to perform a service thereunder that one has not performed in approximately six years without the knowledge and prior approval of a supervising physician is another.

The IC premised the allegation on a violation of NRS 630.306(1)(e), which supports disciplinary action for "[p]racticing or offering to practice beyond the scope permitted by law or performing services which the licensee knows or has reason to know that he or she is not competent to perform or which are beyond the scope of his or her training." Given there was no evidence refuting Respondent's training and ability to administer the Botox injections, what is left is the scope of his actions as permitted by law.

NAC 630.360 provides that the medical services a physician's assistant is authorized to provide must be commensurate with the education, training, experience and level of competence of the physician's assistant and within the scope of practice of the supervising physician of the physician's assistant. At the time the Botox injections were administered by Respondent, Dr. Sheep's scope of practice was emergency medicine. By all accounts, no foray into a boutique cosmetic practice had yet been established.

With that, it is evident that Dr. Sheep had not authorized Respondent to recommence cosmetic services and, therefore, Respondent practiced beyond the scope permitted by law in that Dr. Sheep's scope of practice, without having made any shift back to cosmetic medicine, was limited at the time to emergency medicine.[3] As such, it would be appropriate to hold Respondent accountable for practicing outside the scope of his license.

BASED UPON THE FOREGOING, it is recommended that the Board find Respondent David Kayle McCleve, P.A.-C in violation of NRS 630.3062(1)(a), Failure to Maintain Complete Medical Records, as alleged in Count II of the Complaint field on November 22, 2024; and NRS

[3] Whether Dr. Sheep was qualified to supervise the cosmetic procedure that Respondent performed is a question undersigned does not reach.

630.306(1)(e), Practice Beyond Scope of License, as alleged in Count IV of the Complaint. Undersigned defers to the Board as to determining appropriate sanctions.

DATED this 25th day of November, 2025.

By: _____

Patricia Halstead, Esq.
Hearing Officer
(775) 322-2244

CERTIFICATE OF SERVICE

I certify that on this day, I served by personally delivering or mailing, postage pre-paid, a true and correct file-stamped copy of the foregoing **FINDINGS AND RECOMMENDATIONS** to the following parties:

Deonne E. Contine
General Counsel
Sarah A. Bradley
Deputy Executive Director
Nevada State Board of Medical Examiners
9600 Gateway Drive
Reno, NV 89521

David Kayle McCleve, PA-C
C/o Lisa Zastrow, Esq.
9900 Covington Cross Drive, Ste. 210
Las Vegas, NV 89144

Certified Mail No.: 9489 0178 9820 3045 5236 76

DATED this 26th day of November, 2025.

Signature

Mercedes Fuentes
Printed Name

Legal Assistant
Title

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BEFORE THE BOARD OF MEDICAL EXAMINERS
OF THE STATE OF NEVADA

* * * * *

In the Matter of the Charges and Complaint Against: **DAVID KAYLE MCCLEVE, PA-C,** **Respondent.**	**Case No.: 24-42281-1**

FILED
DEC 10 2025
NEVADA STATE BOARD OF MEDICAL EXAMINERS
By:

OFFICE OF THE GENERAL COUNSEL
Nevada State Board of Medical Examiners
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THE INVESTIGATIVE COMMITTEE OF THE NEVADA STATE BOARD OF MEDICAL EXAMINERS' MOTION FOR RECONSIDERATION

The Investigative Committee (IC) of the Nevada State Board of Medical Examiners (Board) hereby requests reconsideration of the Findings and Recommendations of the Hearing Officer ("Findings"), issued November 25, 2025, pursuant to NRS 622A.390(1)(b).

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

On November 22, 2024, the IC filed a formal complaint against Respondent alleging the following violations of NRS Chapter 630:

a. Count I, Malpractice. Respondent failed to use the reasonable care, skill or knowledge ordinarily used under similar circumstances[1] because he injected a "private pay" client with Botulinum toxin during a break from his emergency department shift at North Vista Hospital.

b. Count II, Records Violation. Respondent failed to correctly document his actions when he treated Patient A, whose medical records were not timely, legible, accurate, and complete because Respondent did not create any medical records for his treatment of Patient A.

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[1]The construction of the term malpractice in NAC 630.040 includes all categories of licenses issued by the Board. The regulations were updated to clarify that in LCB File No. R171-20, June 2, 2023. The reference to the old language in the complaint was in error because the complaint template was not updated prior to filing the Complaint against Respondent.

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c. Count III, Failure to Have a Supervision Agreement on File with the Board. Respondent did not provide a supervision agreement on the form required by the Board and signed by both he and his supervising physician prior to the time he injected Patient A with Botulinum toxin.

d. Count IV, Practicing Beyond Scope of License. Respondent provided medical services outside the scope of practice of his supervising physician because he injected Patient A with Botulinum toxin at a location within the emergency department at North Vista Hospital when he was not authorized by his supervising physician to provide such treatment.

The formal hearing of the Complaint was conducted on September 17, 18 and 22, 2025, via Zoom, where counsel for the IC of the Board Sarah A. Bradley, and Respondent's counsel Lisa J. Zastrow, Esq. appeared.

On November 25, 2025, the Hearing Officer issued her Findings and Recommendations (Recommendations) pursuant to NAC 630.470(8). In pertinent part, the Hearing Officer submits that the IC had not met its burden as to Counts I and III alleged in the Complaint. Synopsis at 15:26–28; 16:20–23.

Respectfully, the IC asserts error in the Recommendations with respect to the Count I and Count III and further asserts this error constitutes grounds for the Hearing Officer to reverse her findings with respect to those counts in the Recommendations. *See* NRS 622A.390(5)(b).

Accordingly, the IC requests the Hearing Officer reconsider her assessment and recommendation with respect to Count I and Count III and to an amended Recommendations in conformance therewith.

II. LEGAL ARGUMENT

NRS 622A.390(1)(b) provides in part that 1. [a]fter the close of the hearing, a party may file only the following motions: (b) [a] motion requesting reconsideration of the findings and recommendations of the hearing panel or officer or the final decision of the regulatory body. NRS 622A.390(5)(b) provides in part that [e]rror in the hearing or in the findings and recommendations or the decision that would be grounds for reversal of the findings and

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recommendations or the decision. Therefore, this motion is timely and made pursuant to NRS 622A.390.

NAC 630.040, as amended by R171-20 and R069-23, defines malpractice as "the failure of a physician, physician assistant, anesthesiologist assistant, practitioner of respiratory care or perfusionist, in treating a patient, to use the reasonable care, skill, or knowledge ordinarily used under similar circumstances." NAC 630.040[2] is an attempt to add a "reasonable provider" standard to determining whether conduct by a listed provider constitutes malpractice which is subject to discipline by the Board pursuant to NRS and NAC Chapters 630.

Repeated testimony throughout the hearing, as summarized in the Findings, indicates that Respondent's injection of botulism type A (Botox) into Patient A in the emergency room during his emergency department shift at North Vista Hospital was not reasonable conduct.[3] Specifically, the IC's witness, Ms. Elmquist, also a physician assistant practicing in emergency medicine, indicated that performing an "unauthorized cosmetic procedure in the hospital emergency room," Synopsis 3:22–23, was "unreasonable in consideration of the fact that the injections were done in a location where they were not sanctions and Botox was administered to a patient that was not registered [at the hospital] and no records were made." Synopsis 4:20–22. Respondent himself conceded in his testimony that "inviting a patient to a hospital to receive cosmetic injections is 'not normal' and was against hospital policy." Synopsis 6:19–20. Respondent further indicated that "medically what he did was fine but ethically it was not." Synopsis at 9:1. Dr. Sheep, who was Respondent's supervising physician of record, stated "that the location for services was not North Vista Hospital and that he would never have authorized Respondent to perform a cosmetic

[2] The IC respectfully requests that the Findings be amended to remove the reference to NRS 41A.015 on 14:19–22 which does not apply to the instant matter. NRS 41A applies to civil actions and the elements that must be proved in a civil action are not the same as that which must be proved in an administrative matter brought by the IC. For example, the IC does not need to prove causation and damages in an administrative matter because its duty is to protect the public. *See* NRS 630.003. Similarly, harm to Patient A as addressed in Synopsis 14:23–15:2 is not relevant or appropriate to be considered as part of the analysis as to whether Respondent committed malpractice as defined in NAC 630.040. The focus of the Board when reviewing disciplinary matters, finding violations of law, and assessing potential discipline is on whether the standard set by law was met by the licensee and what sanction for a violation may be warranted.

[3] The IC was unable to inquire as to the skill of the Botox injections themselves because there were no medical records for Patient A's care provided by Respondent. Failure to completely create a medical record is also not reasonable conduct and could be sufficient itself to support a finding of malpractice. This is not a case where records were present but incomplete or inadequate. They were not created and not available; Respondent should not be able to use that as a shield for his own unreasonable conduct.

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procedure there." Synopsis 10:24–11:1. Dr. Sheep further testified that "Respondent injecting Botox in a hospital emergency department to a patient that was not registered was not reasonable." Synopsis 11:27–12:1. In short, all of the health care providers that testified at the hearing, including Respondent, agree that Respondent's injection of Botox into Patient A as alleged in the complaint was not appropriate. Dr. Sheep and Ms. Elmquist both go further stating that Respondent's conduct was not reasonable. This testimony, from all three of them, is sufficient to support Count I's allegation that Respondent's conduct was not reasonable by a preponderance of the evidence, and accordingly, IC respectfully requests that the Hearing Officer amends her Findings and recommends that the Board find that Count I has been proven.

Count II in the IC's Complaint alleges that Respondent violated NAC 630.340(2) by providing medical services to Patient A without having a supervision agreement on file with the Board for such services. Such a violation is grounds for disciplinary action pursuant to NRS 630.306(1)(b)(2). In this matter, Respondent did have an active supervision agreement for cosmetic services on file with the Board at the time that he injected Patient A with Botox while on shift at the emergency department at North Vista Hospital with Dr. Sheep. However, Dr. Sheep indicated that he was no longer supervising Respondent's provision of cosmetic services after October 1, 2021 when he left My Shape Lipo, Synopsis 10:9–11,[4] the incident at issue occurred on April 8, 2023, and Respondent himself indicated, in his testimony, that he had not provided Botox services since 2017, which was prior to the date of the supervision agreement he had on file with Dr. Sheep. Synopsis at 6:24–25; Exhibit 12, NSBME (Reb) at 36. If Botox was not a service that Respondent had performed since 2017, the supervision agreement on file between Dr. Sheep and Respondent was dated March 12, 2021[5], he has no basis to believe that Botox was a service that Dr. Sheep would be supervising him to perform on April 8, 2023.

The testimony was clear that Dr. Sheep and Respondent were going to "commence a cosmetic treatment partnership," Synopsis at 4:6–7,[6] but that had not occurred as of April 8, 2023.

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[4] Dr. Sheep testified that any cosmetic services performed by Respondent after October 1, 2021, would not have been authorized under his supervision. Synopsis 10:9–11.

[5] *See* Exhibit 12, NSBME (Reb) at 36.

[6] See also Synopsis at 5:8–11. "Respondent admitted to there being no formal business agreement with Dr. Sheep or a medical spa owner when he was called to provide cosmetic services to a 'VIP' client of a medical spa."

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Indeed, the purported reason that Respondent injected Patient A with Botox in the emergency department on April 8, 2023, was to impress a medical spa owner that he was ***hoping to do business with***. Synopsis 8:13–14 (emphasis added). Respondent testified that it was "his hope to start a business providing services to medical spas as supervises by Dr. Sheep, who had supervised Respondent when he did liposuction with My Shape Lipo." Synopsis 8:10–12. Logically, if Respondent did not yet have a cosmetic venture with Dr. Sheep for the provision of Botox services to medical spa clients, Dr. Sheep was not supervising him during the provision of the service to Patient A on April 8, 2023. Dr. Sheep testified that "he knew Respondent was working towards establishing a boutique medicine business venture but was unaware that Respondent was going to start or had started providing cosmetic procedures, and the first he learned of it was after the fact in relation to the Botox injections at issue" in this case. Synopsis 12:3–6. Dr. Sheep further stated "the Botox injections Respondent undertook were not under his supervision and he was not aware that the supervisory agreement was still on file or that Respondent was going to commence undertaking esthetic procedures." Synopsis 12:6–9. Dr. Sheep testified that he "was not meeting with Respondent on a regulator basis nor in a supervisory capacity, and, to that end, it would not have been reasonable for Respondent to believe that he was still subject to Dr. Sheep's supervision." Synopsis 12:9–12. Dr. Sheep further testified that "he was willing to supervise Respondent for esthetic procedures but no formal workings for the business venture contemplated had been finalized." Synopsis 12:15–17.

At the hearing, Respondent indicated "Dr. Sheep had not authorized him to inject Botox at any specific location," Synopsis 7:13, and "Dr. Sheep was not supervising him that day in his capacity working in emergency medicine but was supervising him with respect to carrying out the Botox procedure," Synopsis 7:15–17, even though Respondent acknowledged that "Dr. Sheep does not have privileges at North Valley Hospital where Respondent undertook the Botox injections." Synopsis 7:18–19.

Based on the testimony of both Dr. Sheep and Respondent as well as the exhibits admitted into evidence at the hearing, including Respondent's own statement in Exhibit 2, Respondent did

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The conversations that Dr. Sheep and Respondent were having at this time "were not in a supervisory contest" and were "about a venture into boutique medicine" that had not yet occurred. Synopsis 11:25–26.

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not have a supervising physician in place for the services that he provided to Patient A at North Vista Hospital on April 8, 2023. The record is clear that Respondent had a supervising physician in place for his provision of emergency medicine services at North Vista Hospital, as of April 8, 2023, and an outdated supervision agreement with Dr. Sheep on file as of April 8, 2023, that both parties knew was not currently being utilized based on the testimony provided at the hearing, that Dr. Sheep was not aware existed based on his statements and testimony, and that Dr. Sheep terminated on June 14, 2023 after learning it was still in place.[7] Those agreements did not cover the services that Respondent provided to Patient A on April 8, 2023. Respondent even admitted that initially in his response as contained in Exhibit 2. Accordingly, the IC has met its burden of proof beyond a preponderance of evidence with regard to Count III, and respectfully requests that the Hearing Officer modify her Findings to recommend that the Board find Count III was proven.

III. CONCLUSION

For the foregoing reasons, the IC respectfully requests the Hearing Officer reconsider her Findings and Recommendations for this matter with respect to Count I and Count III as contained in the IC's formal complaint and issue an amended Findings and Recommendations.

DATED this 10th day of December, 2025.

INVESTIGATIVE COMMITTEE OF THE
NEVADA STATE BOARD OF MEDICAL EXAMINERS

By: Sarah A. Bradley

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[7] Exhibit12, NSME (Reb) at 37.

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FILED

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NEVADA STATE BOARD OF MEDICAL EXAMINERS

By:

BEFORE THE BOARD OF MEDICAL EXAMINERS

OF THE STATE OF NEVADA

In the Matter of Charges and Complaint Against: DAVID KAYLE McCLEVE, P.A.-C Respondent	**Case No. 24-4228-1** **MCCLEVE'S OPPOSITION TO MOTION FOR RECONSIDERATION**

COMES NOW, David Kayle McCleve, PA-C ("Respondent"), by and through undersigned counsel, pursuant to NRS 622A. 390, and hereby submits this Opposition to the Investigative Committee's Motion for Reconsideration of the Hearing Officer's Findings and Recommendations dated November 25, 2025.

I. INTRODUCTION

The Investigative Committee ("IC") of the Nevada State Board of Medical Examiners seeks reconsideration of the Hearing Officer's Findings and Recommendations regarding Count I (Malpractice) and Count III (Failure to Have a Supervision Agreement on File with the Board). The IC's motion should be denied because it fails to establish any error that would be grounds for reversal of the Hearing Officer's well-reasoned findings. Nev. Rev. Stat. Ann. § 622A.390.

II. LEGAL STANDARD

A motion for reconsideration in administrative proceedings before Nevada regulatory bodies is governed by NRS 622A. 390(1)(b). Nev. Rev. Stat. Ann. § 622A.390. For such a motion to be granted, the moving party must demonstrate error in the hearing or in the findings and recommendations that would constitute grounds for reversal. The Nevada Administrative

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Procedure Act establishes that administrative findings should be given substantial deference, particularly with respect to factual determinations made by hearing officers who have directly observed witness testimony. Nev. Rev. Stat. Ann. § 233B.135. This deference is consistent with the legislative intent behind Nevada's administrative procedure laws, which establish minimum procedural requirements while allowing for agency expertise in specialized areas. Nev. Rev. Stat. Ann. § 233B.020.

III. ARGUMENT

A. The Hearing Officer Correctly Found That Count I (Malpractice) Was Not Proven.

The IC has failed to demonstrate any error in the Hearing Officer's finding that Count I was not proven by a preponderance of the evidence. The Hearing Officer conducted a thorough analysis of the malpractice allegation, correctly applying the definition of malpractice under NAC 630.040 as "the failure of a physician, physician assistant, anesthesiologist assistant, practitioner of respiratory care or perfusionist, in treating a patient, to use the reasonable care, skill, or knowledge ordinarily used under similar circumstances."

The Hearing Officer properly focused on Respondent's actual treatment of Patient A, rather than peripheral issues such as the location where treatment was provided or record-keeping deficiencies (which were appropriately addressed under Count II). As the Hearing Officer noted, there was no evidence that Patient A suffered any adverse effects from the Botox treatment itself. The IC's witnesses could not testify that the actual administration of Botox fell below the standard of care, as there was no evidence contradicting Respondent's testimony that he performed a proper medical screening and administered the Botox appropriately.

The IC's argument improperly conflates hospital policy violations and record-keeping deficiencies with malpractice in treatment. The Hearing Officer correctly distinguished between these issues, finding that while Respondent's conduct may have violated hospital

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policy (resulting in his termination) and record-keeping requirements (resulting in a finding of violation under Count II), the IC failed to prove that his actual treatment of Patient A constituted malpractice.

B. The Hearing Officer Correctly Found That Count III (Failure to Have a Supervision Agreement on File) Was Not Proven.

The IC has similarly failed to demonstrate any error in the Hearing Officer's finding regarding Count III. The Hearing Officer correctly noted that the IC's complaint specifically alleged that Respondent "did not provide a supervision agreement on the form required by the Board and signed by both he and his supervising physician prior to the time he injected Patient A with Botulinum toxin."

The evidence presented at the hearing, however, established that Respondent did have a supervision agreement with Dr. Sheep on file with the Board at the time he administered Botox to Patient A on April 8, 2023. This agreement was admitted into evidence as Exhibit 12. The Hearing Officer correctly found that "there was a supervisory agreement on file between Dr. Sheep and Respondent effective April 8, 2023, when Respondent administered the Botox to Patient A, and there was no basis established from which to conclude that a prior address listed on the form was fatal to its purpose."

The IC now attempts to reframe Count III to argue that the supervision agreement was not valid because Dr. Sheep was not actively supervising Respondent for cosmetic procedures. This argument improperly shifts the focus from what was actually alleged in Count III (no agreement on file) to a different issue (the scope of supervision under an existing agreement). The Hearing Officer correctly focused on the actual allegation in Count III and found it was not proven.

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C. The Hearing Officer's Findings Are Entitled to Substantial Deference.

The Hearing Officer in this case presided over three days of hearings, directly observed the testimony of all witnesses, and was in the best position to assess credibility and weigh conflicting evidence. Her findings reflect a careful and thorough analysis of the evidence presented, including detailed consideration of the testimony of Respondent, Dr. Sheep, and the IC's expert witness.

Nevada law recognizes the importance of deferring to administrative fact-finders who have directly observed witness testimony. Nev. Rev. Stat. Ann. § 233B.135. The IC has not identified any clear error of fact or law that would justify overturning the Hearing Officer's well-reasoned findings. Instead, the IC merely disagrees with the Hearing Officer's weighing of the evidence and interpretation of the applicable legal standards.

IV. CONCLUSION

For the foregoing reasons, Respondent respectfully requests that the Hearing Officer deny the IC's Motion for Reconsideration and affirm her Findings and Recommendations dated November 25, 2025.

DATED this 16th day of January, 2026.

GARIN LAW GROUP

By: */s/ Lisa J. Zastrow*
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CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b) and Administrative Order 14-2, I certify that on the 16th day of January, 2026, I electronically served the foregoing **MCCLEVE'S OPPOSITION TO MOTION FOR RECONSIDERATION** to the following parties by email to:

INVESTIGATIVE COMMITTEE OF THE NEVADA STATE BOARD OF MEDICAL EXAMINERS DEONNE E. CONTINE General Counsel 9600 Gateway Drive Reno, NV 89521 Tel: (775) 688-2559 Email: dcontine@medboard.nv.gov *Attorney for the Investigative Committee*	

/s/ Juan Cerezo
An Employee of GARIN LAW GROUP

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BEFORE THE BOARD OF MEDICAL EXAMINERS
OF THE STATE OF NEVADA

* * * * *

In the Matter of Charges and Complaint Against

DAVID KAYLE MCCLEVE, PA-C,

Respondent.

Case No.: 24-42281-1

FILED

JAN 29 2026

NEVADA STATE BOARD OF MEDICAL EXAMINERS

By:

TO: Sarah Bradley
Deputy Executive Director
Nevada State Board of Medical Examiners
9600 Gateway Drive
Reno, Nevada 89521

David Kayle McCleve, PA-C
c/o Lisa Zastrow, Esq.
9900 Covington Cross Drive, Ste 210
Las Vegas, NV 89144

ORDER DENYING MOTION FOR RECONSIDERATION

Stemming from the Complaint against Respondent filed on November 22, 2024, and as the result of an evidentiary hearing held on September 17, 18, and 22, 2025, Undersigned issued Findings and Recommendations, dated November 25, 2025, by which Respondent was deemed to have violated Count II, Failure to Maintain Complete Medical Records, a violation of NRS 630.3062(1)(a), which was premised upon the allegation that Respondent failed to maintain complete medical records relating to the diagnosis, treatment, and care of a patient in a timely, legible, accurate and complete manner. Undersigned also found Respondent in violation of Count IV, Practice Beyond Scope of License, a violation of NRS 630.306(1)(c), which was premised upon the allegation that Respondent acted outside the scope of his license by injecting Botox without the authorization of his supervising physician.

Undersigned did not find Respondent in violation of Count I, Malpractice, a violation of NRS 630.301(4), which was premised upon the allegation that Respondent failed to use the reasonable care, skill, or knowledge ordinarily used under similar circumstances when on April 8, 2023, he injected a patient with Botox during an emergency department shift at North Vista Hospital, did not conduct a medical examination or history, and failed to create any related medical documentation. Nor did Undersigned find Respondent to be in violation of Count III, Violation of Standard of Practice Established by Regulation, a violation of NRS 630.306(1)(b)(2), which was premised upon the allegation that Respondent administered Botox without having a supervisory agreement on file with the Board.

The Investigative Committee of the Nevada State Board of Medical Examiners (the "IC") has sought reconsideration of the findings in favor of Respondent as to Counts I and III, premised upon there being an error. The error alleged, however, is based upon the fact that Undersigned did not agree with the IC's interpretation of the underlying circumstances as they were argued to have supported Counts I and III.

Within the Findings and Recommendations Undersigned provided an analysis of the evidence presented in consideration of the violations alleged and articulated with particularity why the circumstances did not support the violation of Counts I and III as pleaded. As to Count I, Undersigned provided that the definition of malpractice is premised upon treatment itself and, as to the actual treatment, no related outcome was relied upon to support a claim for malpractice. Undersigned further provided that the IC's peer reviewer was unable to address malpractice as to the treatment itself, and that there was no evidence to demonstrate that the harm suffered by the patient derived from Respondent's treatment.

In seeking reconsideration, the IC continues to rely upon the location of the treatment, not the treatment itself, to claim the wrong conclusion was reached. It remains, however, that the location of the treatment was at a hospital emergency room. Although it was not an appropriate location given its designated use and function, it is nonetheless a "medical facility" where, by statute, Botox injections are approved to take place, as was addressed in the Findings and Recommendations. Given the IC merely makes the same argument as to location, as opposed to

treatment, the recommendation as to Court I remains, and Undersigned notes that disagreement with the conclusion reached does not support reconsideration for an actual error.

As to Count III, the Complaint pleads that "Respondent violated NAC 630.340(2) when he did not have a Supervisory Agreement on file for the provision of the services described . . ." Yet, there was a supervisory agreement on file with Dr. Sheep. The IC itself provides in its Motion for Reconsideration, "Respondent did have an active supervision agreement for cosmetic services on file with the Board at the time he injected Patient A with Botox . . ." Motion, p. 4, lines 13-14. Given the pleaded allegation, there is no error in the conclusion regarding Count III. To the extent the IC seeks reconsideration based upon the argument that Respondent had no basis to believe that Botox was a service that Dr. Sheep was then supervising him to perform, that argument and allegation is captured within Count IV, for which a violation was found.

Based upon the foregoing, Undersigned concludes that no error has been established and denies the IC's Motion for Reconsideration. The Findings and Recommendation as submitted stand.

DATED this 28th day of January 2026.

By: _____

Patricia Halstead, Esq.
Hearing Officer
(775) 322-2244

CERTIFICATE OF SERVICE

I certify that on this day, I served by personally delivering or mailing, postage pre-paid, a true and correct file-stamped copy of the foregoing **ORDER DENYING MOTION FOR RECONSIDERATION** to the following parties:

Sarah A. Bradley
Deputy Executive Director
Deonne E. Contine
General Counsel
Nevada State Board of Medical Examiners
9600 Gateway Drive
Reno, NV 89521

David Kayle McCleve, PA-C
c/o Lisa Zastrow, Esq.
Garin Law Group
9900 Covington Cross Drive, Suite 210
Las Vegas, NV 89144

Certified Mail No.: 9489 0178 9820 3045 5243 38

DATED this 29th day of January, 2026.

Signature

Mercedes Fuentes
Printed Name

Senior Legal Assistant
Title

4

BEFORE THE BOARD OF MEDICAL EXAMINERS

OF THE STATE OF NEVADA

FILED
SEP 30 2025
NEVADA STATE BOARD OF MEDICAL EXAMINERS

In the Matter of Charges and Complaint Against:

Case No. 24-42281-1

DAVID KAYLE MCCLEVE, PA-C,

Respondent.

_____/

TRANSCRIPT OF HEARING PROCEEDINGS

DAY 1

Via Zoom

Reno, NV 89521

Wednesday, September 17, 2025

Reported by: Brandi Ann Vianney Smith

Job Number: 7602044

A P P E A R A N C E S:

THE HEARING OFFICER:	PATRICIA HALSTEAD, ESQ.
FOR THE INVESTIGATIVE COMMITTEE OF THE NEVADA STATE BOARD OF MEDICAL EXAMINERS:	SARAH BRADLEY, ESQ. DEONNE CONTINE, ESQ. Nevada State Board of Medical Examiners 9600 Gateway Drive Reno, NV 89521 sbradley@medboard.nv.gov
FOR THE RESPONDENT:	LISA ZASTROW, ESQ. Garin Law Group 9900 Covington Cross Drive, Suite 210 Las Vegas, NV 89144 lzastrow@garinlawgroup.com

ALSO PRESENT:
Mercedes Fuentes, Legal Assistant

-o0o-

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RENO, NEVADA -- WED., SEPT. 17, 2025 -- 8:30 A.M.

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HEARING OFFICER HALSTEAD: All right. I'm going to call this matter. This is In the Matter of Charges and Complaint Against David Kayle McCleve, PA-C.

Did I say your middle name right, Mr. McCleve?

MR. MCCLEVE: Yep. Just like the vegetable.

HEARING OFFICER HALSTEAD: Okay. Great. Thank you.

This is case number 24-42281-1. Mr. McCleve is present with counsel. Ms. Zastrow, can you please state your appearance?

MS. ZASTROW: Sure. Thank you, Your Honor. Lisa Zastrow, appearing in defense with Mr. McCleve.

HEARING OFFICER HALSTEAD: Okay.

And I see Ms. Bradley on behalf of the IC. Ms.~Bradley, can you please state your appearance?

MS. BRADLEY: Yes. Sarah Bradley, Deputy Executive Director here on behalf of the

Investigative Committee. I also have Ms. Deonne Contine in my office here with me, also on behalf of the Investigative Committee. But I'm -- I'm planning to take the lead in the case.

HEARING OFFICER HALSTEAD: Okay. Thank you.

I am Patricia Halstead, I'm the Hearing Officer assigned to this matter. This matter is being conducted via the Zoom app by consent of all the parties, so everyone will appear -- be appearing remotely. If there's any issues with regard to that or with recording, I will rely on the court reporter to let us know. And, otherwise, we'll be proceeding that way. The Zoom link is being handled by the IC, and so they're the ones who will manage letting witnesses in, all of that.

Anything -- I understand, there's some things we need to place on the record formally before we start. Who would like to -- I believe Ms.~Zastrow was the one that indicated that.

Ms.~Zastrow, would you like to start with that?

MS. ZASTROW: Yes -- or Ms.~Bradley, if she has anything.

MS. BRADLEY: I don't think I do, but,

please, go ahead.

MS. ZASTROW: Okay. Thank you, Your Honor. And thank you for agreeing to hear this matter today. You've already met Mr. McCleve, Kayle. He's my client.

I am realizing that someone's mowing the lawn outside at my window, and that's the fun of Zoom. If it gets too loud, let me know, and I'll go into another room.

Just for the record, Your Honor, there's another case that was brought against Mr. McCleve, which we are hotly disputing. That case has been litigated and is currently in front of the Nevada Supreme Court, which has ordered the Board to respond to our writ petition. The Board insisted that this case today be combined with that case. Yet here we are today, moving forward with that case, because they have inexplicably changed their mind.

One of the issues in the other case was an alleged lack of supervision, which is an issue in this case as well, and we'll discuss that there's no evidence to support that.

But I would like to note for the record the really inexplicable shift and what has occurred

in forcing us to go forward today when we've been told for months and months and months that we cannot handle this case, which, Your Honor, is a Botox case, for lack of a better way to explain it. Now we're being forced to incur, potentially, costly fees, cross-examinations, all of those things which could have been avoided.

And I would note for the record that this case began several years ago based on a complaint from a hospital. And the Board notified Mr. McCleve of that, and he responded. And we're going to get into that later.

In January of 2024, we discussed with the Board that that case would go away if we went forward on the case, which is now pending in front of the Supreme Court. We went forward with the other case, which we feel lacks merit and is not before you, in May of 2024 --

MS. BRADLEY: I want to object if I could. I don't think settlement negotiations are proper to be on the record.

MS. ZASTROW: I'm not --

MS. BRADLEY: -- aware of that.

MS. ZASTROW: I'm not aware of any rule that would prevent that. This is related to a

timeline and related to the Board's motive. If there's a rule that would prohibit --

HEARING OFFICER HALSTEAD: What she's referring to is the NRS, which doesn't allow settlement negotiations to be admissible for purposes of addressing the merits of a case. They --

MS. ZASTROW: What NRS are they addressing? That has nothing to do --

HEARING OFFICER HALSTEAD: I'm making -- I'm making my record, Ms. Zastrow.

It has to do with settlement negotiations for purposes of the merits of the case. But settlement negotiations can be used for other purposes. And my understanding from Ms.~Zastrow's testimony is that she's addressing it with regard to a timeline. The rules of evidence aren't strictly adhered to in these hearings.

So to the extent that she's referencing it for a timeline, go ahead, Ms.~Zastrow.

MS. ZASTROW: A timeline and a motive. Thank you.

Last May, we went before another hearing officer on the other case, and we won. That case was dismissed. The Board filed an appeal to a

district court in Washoe County, in which we were prohibited from being a party.

It was only after we won that case that in November of 2024, the Board decided to file these charges against Mr. McCleve, throwing the book at him, if you will, including causes of action that were never included in the initial complaint against Mr. McCleve.

And so I think it's important to look at what has occurred, look at the motivating factors here, because, as you know from my pretrial filings, it's my position that due process has been completely trampled on, in this case and in others, with respect to the Board.

So the other case, right now, the Supreme Court has ordered the Board to respond to our writ petition. And that writ petition also challenges the Washoe County order.

So it wasn't until they lost that case that they then said, okay, well, let's charge Mr. McCleve because he administered a paralytic in an ER to a patient, so let's -- let's throw the book at him for that.

And we tried to enter into negotiations with the Board and say, look, we understand that

there may be the absence of records, and we'll explain why. But I said that there's no reason to go forward with this hearing today because we can see a number of the issues. And what's appropriate would then be nominal, non-disciplinary stipulation, or what have you.

But that's not what's happening today. The Board wants to paint the picture, Ms. Halstead, Officer Halstead, in your mind that my client is some horrible PA that's out in the state of Nevada just rendering awful care to his patients, which could not be further from the truth. And you're going to hear from him today.

It's my belief that the Board wants this opportunity to sort of plant some seeds in your mind with respect to the other case in which may or may not be heard before you.

So that's where we are today. We're in front of you because Mr. McCleve, while he was working as an ER physician -- or physician's assistant, administered a paralytic, a Botox injection, in the ER. That is why we're here.

So I want to talk to you, a couple of things, about the motion that we filed. I --

HEARING OFFICER HALSTEAD: Ms. Zastrow,

what you're saying to me kind of sounds like an opening statement.

MS. ZASTROW: I -- I'm also --

HEARING OFFICER HALSTEAD: I'm not sure where you're going with this. Maybe -- I know that you just said you want to talk to me about your motion, but the motion -- which motion are you referring to? The motion that I already ruled on?

MS. ZASTROW: Your Honor, I'm getting to my point, which is the motion that we filed and you ruled upon, we did not have an opportunity to reply as per the rules, and we thought this hearing was going to be reset. So I'd like -- my motion now is for you to reconsider your ruling, and I'm going to tell you exactly why I think it should be reconsidered.

HEARING OFFICER HALSTEAD: Okay. That -- I'm denying that. That hasn't been in writing. You also mentioned that today's hearing was -- well, I don't -- that the Board was forcing the hearing today. I don't know how that happened.

(Virtual connectivity issue.)

HEARING OFFICER HALSTEAD: So we're back on the record. We lost the recording. I stopped talking when the recording ended, but the recording

is back.

So Mr. McCleve filed a motion in limine to exclude the testimony of the people that I just read with respect to the order: Johnna LaRue, Ernesto Diaz, Kory Linn, and Stephanie Elmquist, PA-C. That was filed back in April of 2025.

That because of everything that was going on with the other case that Ms. Zastrow referenced in this case, it wasn't clear to me that this case would be going forward or not. So I had -- I conferred with the parties and they said it would be going forward, and so I went ahead and issued the order on that motion denying it. That order was signed on -- I believe the 12th. Yeah, September 12, 2025.

So since then, this hearing has been scheduled. I haven't had any motions to continue it. We're here for the purposes of this hearing today, and so that's what I intend to hear.

Ms. Zastrow placed a statement on the record about concerns about motive for this case. I've heard those. And then she moved to have me reconsider that motion; I'm denying that.

I'm just trying to keep this on track procedurally. There was a lot of argument. So,

procedurally, before we go to the merits of this case, is there anything further?

MS. ZASTROW: Yes, Your Honor, if you would let me finish, please.

This order was sent to us on the 15th. When you sent it to the Board, it wasn't sent to us until the 15th. I didn't have any opportunity to submit a written motion, nor is a written motion -- is required.

All I'm simply doing is correcting the record because the information in the order is incorrect because of what the Board told you, they gave you incorrect information, and I would think that the Board and Your Honor would want a clear record. That's all.

HEARING OFFICER HALSTEAD: So there's no --

MS. ZASTROW: The order --

HEARING OFFICER HALSTEAD: -- procedure for a reply within the administrative code.

MS. ZASTROW: Exactly.

HEARING OFFICER HALSTEAD: There was a motion and an opposition, and we had a hearing coming, so I ruled on it.

MS. ZASTROW: But you --

HEARING OFFICER HALSTEAD: My ruling stands, and we're going to move on to the hearing.

MS. ZASTROW: So you're going to deny me the opportunity to correct the record, which includes inaccurate information in your order? Is that what your order is? I just want that --

HEARING OFFICER HALSTEAD: Ms. Zastrow, if you want relief from my order, if necessary, you can take it up after the hearing. The order has been issued. The matter was fully briefed. There was no authority for reply. We're here on the merits of the hearing today.

MS. ZASTROW: There is authority for you to consider -- reconsider verbally. You have the authority to do that. I just want to --

HEARING OFFICER HALSTEAD: And I've already ruled on that, and I said I'm not reconsidering the order.

MS. ZASTROW: Because you don't --

HEARING OFFICER HALSTEAD: Was there anything --

MS. ZASTROW: -- want the record corrected?

HEARING OFFICER HALSTEAD: -- to add before we proceed to the merits of this matter?

MS. ZASTROW: Yes. I would like to make another motion based on the fact that the Board failed to provide a written summary of the testimony as required under the administrative code.

And I have their -- in front of me, Your Honor, as you're aware, the Board is required to provide a summary of all the testimony that's going to be presented at this hearing.

NAC 630.465 requires a list of witnesses and a summary of the testimony of those witnesses. What I got was a list of witnesses, and for example with Ms. LaRue, it says she's going to testify regarding the investigation. That's not a summary. That's not a summary of her testimony.

What's the definition of a summary? It's a statement or a count of the main points of something, such as text, an event, discussion, condensing the essential information and details. It aims to provide a concise overview that captures the core idea or outcomes.

So not only is the Board in violation of NRS 622A.330 because they did not -- contrary to what they claim they did, they did not provide us information about what these witnesses are going to testify to.

They also failed to do it in their prehearing statement, which is a requirement, NAC 630.465. It's very clear. They're circumventing their own rules. They gave us a list of witnesses, and they did not provide a summary of what they're going to testify to. We're supposed to show here -- to show up here and do trial by ambush, which is antithetical to the administrative rules in Nevada.

And I understand they want to make a lot of arguments, and they want to shut me down from replying. They want to feed you information that's incorrect and then say I don't get a chance to reply, and that's fine. We can correct the record during this hearing.

But the fundamental truth is that my client, his life is on the line, his reputation is on the line. He's being accused of malpractice. He's being accused of violating the standard of care.

And what have we been told about that? "Testify regarding the investigation." What? Who opined that my client violated the standard of care? We've been given no information. There's no rule in the procedural -- in the code that would allow them to get away with it.

And I understand they say they've been doing this for years and years and years. But you know what? At this point, we've got the Supreme Court's attention, and we're going to continue to do that, because the legislature did not -- the legislature did not intend for medical doctors and physician's assistants to have to come to these hearings and cross-examine witnesses on the fly without any knowledge of what they're going to say. And that's what we're doing.

And when they say to you in their opposition, we complied, Your Honor, we complied; no, they didn't. They didn't give us any information. They didn't tell us what their witnesses are going to say.

So that's the basis of my motion, my new motion to exclude all of these witnesses. And I can handle that on cross-examination, because I already get the sense that you're going to deny my motion.

But this is the plain language of the NAC, Your Honor. The plain language. We all know what the definition of a summary is, and I submit to you that a summary is not saying they're going to testify. That's what they're saying: They're going to testify. Well, what? What are they going to

say? What's their investigator going to say? I have no idea. I definitely have no idea because everything they put in the record absolutely exonerates Kayle.

So it's all going to be a shock to me, and it's all going to be a shock to him. And I -- I contend that it violates his due process, and this hearing should not go forward.

HEARING OFFICER HALSTEAD: Ms. Bradley?

MS. BRADLEY: Thank you, Ms. Halstead. I mean, I'm looking at our prehearing disclosure right now. And yes, it says:

"Ms. LaRue is expected to verify documentary evidence obtained during the investigation of this case and testify regarding the investigation."

That's what she's going to do. I don't know how else to summarize it.

We have identified Exhibits 1 through 10. We plan to admit 1 through 9 -- or request that 1 through 9 be admitted. Some of those were obtained by Ms. LaRue, and so we're going to ask her basically to authenticate them. I mean, that is what she's going to do. She's going to talk about, you know, a letter she sent, why she sent it, the

response she received. That's what she's going to do.

Mr. Diaz is the chief of investigation. Same basic thing. He's going to testify about the process we do in investigations. He's going to verify documentation that he is able to verify in the file.

And Ms. Elmquist is identified as a physician assistant who's licensed to practice, and she's done a medical review of this case and is expected to testify regarding that review and the applicable standard of care. Again, that's -- I don't know how else to summarize it. That is what she's going to testify about and what she's going to say.

And then Mr. McCleve, we do intend to ask a couple questions to him. And, you know, again, we're hoping that he'll -- he'll answer those questions, and that'll be regarding the facts and circumstances regarding the incident alleged in the Complaint.

So I -- I'm not sure what more of a summary I can give, other than to say what they're going to testify about, which is what we did.

MS. ZASTROW: Your Honor, they didn't.

They said Ms. Elmquist is going to testify about the standard and how he fell below it. She didn't say how. What did he do? Did he administer the Botox incorrectly? What did he do? It's a conclusory statement, it's not a summary, and it doesn't take a JD to know that.

They are required to produce their evidence. How can we rebut what Ms.~Elmquist is going to say when she hasn't told us what she's going to say? What is she going to say? Ms.~Bradley just said that she did a medical records review.

MS. BRADLEY: Well --

MS. ZASTROW: What were her findings? What's the summary? We don't know. What records did she review? A summary is just that. You say Ms.~Elmquist is going to testify that Mr. McCleve should not have done X, Y, and Z, and Mr. McCleve violated the statutes because X, Y and Z. We don't know.

I've got a mountain of potential questions shooting at the dark. This is not the way this is supposed to happen. No other board does it this way. If you are brought before the Nevada State Bar and somebody says that you violated the standard of

care, you think you're not entitled to know what that is before you go before the hearing panel?

We are licensees. We have a due process right in our license because our careers are on the line. This is absolutely insanity, what they're doing.

The hearings that have gone before the two judges in Washoe County did not address this, Your Honor. You attached the Chacon order to your order; that case had nothing to do with the statutes I'm relying on at all. In fact, that doctor was suspended. That was a whole different process. And then the other Woodman case you rely on, we were cut out of that process. It's unconscionable. It's unconscionable.

And that's what Ms. Bradley wants you to do today. She wants you to say, well, Ms. Zastrow, she said that Ms. Elmquist is going to testify about her opinions so you don't get the right to know what those opinions are until she tells you, and that's fair. And it's not. It goes against due process, it's potentially harmful for my client, and it's unconscionable.

So none of these witnesses should testify. And if they want to call LaRue and Diaz to

authenticate records, they don't need to do that. I'll admit to the authentication. We're not here today to authenticate records.

We're here today to testify about why Mr. McCleve should be disciplined. That's what they're asking for, discipline, which could include the suspension of his license, because of a Botox injection that did not cause any reaction. They're not going to tell you that. It's in their own medical records.

So I apologize that I am very, very concerned about this.

HEARING OFFICER HALSTEAD: Anything further, Ms. Zastrow?

MS. ZASTROW: No. Thank you, your Honor.

HEARING OFFICER HALSTEAD: Okay. Thank you.

MS. BRADLEY: Ms. Halstead, could I respond?

HEARING OFFICER HALSTEAD: No, Ms.~Bradley.

MS. BRADLEY: Okay.

HEARING OFFICER HALSTEAD: Okay. So I'm looking at NAC 630.465, as cited by Ms. Zastrow. It says:

"Each party shall provide to every other party a copy of the list of proposed witnesses and their qualifications," and as Ms.~Zastrow said, "a summary of the testimony of each proposed witness."

The summaries provided on the response to respondent's written discovery request, is that the document you're referring to, Ms. Zastrow, as far as disclosures?

MS. ZASTROW: I'm talking about their prehearing statement, Your Honor. It was filed on May 7, 2025. That NAC 630.465 relates to that. I don't know if you have access to the record.

HEARING OFFICER HALSTEAD: I don't know that I have that particular document. I have the one I just referred to.

MS. ZASTROW: And we can --

MS. BRADLEY: If it would --

MS. ZASTROW: -- (inaudible) that to you is filed document. And this is the document that they prepare according to the NAC. And it requires a summary. And my main --

HEARING OFFICER HALSTEAD: Ms.~Bradley, do you have that document in front of you?

MS. BRADLEY: I do have it in front of me, and I'm glad to have Ms.~Fuentes send it to you

right now.

Because I -- I mean, we would have provided it before the prehearing conference that was held in this matter. I don't recall the date, and I'm sorry. It's probably approximately May 7th, since that's the date of the document. But I believe Ms.~Fuentes has access and can send that right now.

HEARING OFFICER HALSTEAD: Let me look at my May emails to see if I have it.

Prehearing statement updated --

MS. BRADLEY: This one says --

HEARING OFFICER HALSTEAD: -- Ms.~Zastrow. I have that.

MS. BRADLEY: Yeah, I can try and find my email to you.

HEARING OFFICER HALSTEAD: Prehearing statements, that's also from Ms. Zastrow. Prehearing statements.

Okay. So here's the one I have from the Board, prehearing conference statement, list of witnesses. I'm going to say what this says for the record. This was the prehearing conference statement, the Investigative Committee of the Nevada State Board of Medical Examiners filed on May 17,

2025.

Ms. Zastrow, this is the document you're referencing. Correct?

MS. ZASTROW: Yes, Your Honor.

HEARING OFFICER HALSTEAD: Okay. And it says:

"Ms. LaRue, Ms. LaRue is expected to verify documentary evidence obtained during the investigation of this case and testify regarding the investigation of this matter.

"Ernesto Diaz, Mr. Diaz is expected to verify documentary evidence obtained during the investigation of this case and testify regarding the investigation of this matter.

"Kory Linn, Chief of Licensing, Ms.~Linn is expected to verify documentary evidence obtained during the investigation of this case and testify regarding the investigation of this matter.

"Stephanie Elmquist, PA-C, Ms. Elmquist is a physician assistant and is licensed to practice medicine in the state of Nevada. Ms.~Elmquist has conducted a medical review of this case and is expected to testify regarding her medical review and the applicable standard of care."

Mr. McCleve is listed, and it says:

"Mr. McCleve is expected to testify regarding the facts and circumstances surrounding the formal Complaint in this case."

Did I read that correctly, everyone?

MS. BRADLEY: Yes.

MS. ZASTROW: Yes.

HEARING OFFICER HALSTEAD: Okay. So, Ms.~Zastrow's point, if I understand correctly, is that this is a very terse summary and it doesn't explain what their testimony is expected to encompass, which puts her at a disadvantage because she cannot prepare adequately to examine or cross-examine these witnesses.

The problem I have with this motion is we're here today for the actual hearing, and it's just being brought to my attention. That was filed back on May 7th, and this is the first I'm hearing of an objection to it.

I do find that the testimony is summarized, it might not be summarized to the extent that would be preferable, but it is a summary of the testimony.

I don't have -- you know, given that we're here today for the actual hearing, I don't have any written documentation in front of me, any case law

cited, any -- there was reference to other boards and how they do it; I don't have any of that in front of me.

So, Ms.~Zastrow, you've made the record. If for some reason this comes back after this and someone needs to review this, I'm denying the motion, but you've made the record and it can be addressed accordingly.

Anything, procedurally, further before we commence?

MS. ZASTROW: Just, Your Honor, can I make one comment? Just only for the record. Thank you for your thoughtful consideration. I really appreciate it.

Just for the record, there is no rule that requires a written motion.

HEARING OFFICER HALSTEAD: But, Ms.~Zastrow, you're talking about you need to be prepared for the hearing, you know what people are going to say and what they're going to argue so you can do your job, and that applies to me as well.

MS. ZASTROW: Your Honor, it happens all the time in trial, issues are raised. I just got your denial of the other motion two days ago. Not only that, the Supreme Court stayed what we thought

was going to be this hearing, and we had asked for a stay when this was filed.

I also filed a motion with you, Your Honor, to continue this hearing. So I would not have --

HEARING OFFICER HALSTEAD: And so the motion -- so I asked -- before we had this hearing today -- I want the record to be clear -- I asked the parties: There is a stay in the Supreme Court matter regarding the writ. This case that we're here for today, the '24 case, has not been stayed. Are we going forward?

And the response I got from the parties was: Yes, we're going forward.

And then we had several emails about what dates were going forward, what times we're going forward, how we're going forward. There was no other objection to going forward, any other concerns with going forward, any concerns with disclosures.

We're here today, going forward as everyone agreed on the dates and times as agreed, and so at this point, that's what we're going to do.

So we're going to move to opening statements. Ms.~Bradley, would you like to provide an opening statement?

MS. BRADLEY: Yes, I would. And I'm sorry, my office line is ringing and I don't know how to send calls. It's noisy here. Let me turn the volume down. I apologize.

I'm sorry about that. Yes.

OPENING STATEMENT

BY MS. BRADLEY:

Sarah Bradley, Deputy Executive Director, on behalf of the Investigative Committee.

In this matter, many of the facts of this case are not disputed. Specifically in Exhibit 2, we have a statement from Mr. McCleve regarding -- it's a response from him to the Board regarding the incident that occurred on April 8, 2023. We believe that the evidence and the testimony will support that he, on April 8, 2023, was working at North Vista Hospital, he had a shift there in the emergency department as a physician assistant.

During that day and during that time, he injected Patient A with botulinum toxin at a location within the hospital. We believe it was in the emergency department, but, really, the location doesn't matter. He was working there, it was at the hospital location.

This patient was not a patient of North

Vista Hospital, so this patient was not someone that was admitted there, receiving treatment in the emergency department at the time that the toxin was administered.

We believe he did not have -- and we believe the evidence will show and, in fact, his own statement -- a supervising physician overseeing this care.

So for a physician assistant under Nevada law to provide services, there's several things that have to happen.

One, they have to have a supervising physician. That supervising physician has to authorize any services that they perform, so they have to be doing things that are authorized by that supervisor. That supervisor also -- it also has to be something that's within the supervisor's scope of practice. And the physician assistant, him or herself, also must be competent to provide those services.

There's a duty there just to make sure that they -- if a task is delegated, that it is something they can do. And in this case, very importantly and problematic for public safety, he didn't have a supervising physician that authorized

him to provide this service, and there wasn't anyone supervising that care.

He also did not create a medical record of that treatment, which is required under Nevada law. And again -- the records are important. A lot of times, we may have a case where we're concerned about whether record is timely, accurate -- accurate, legible, and complete. In this case, there wasn't one. There wasn't one created. And so, to me, that's even more than our normal concerns about records. There just wasn't one.

After the fact, on July 21, 2023, he did send a response to the Board containing some things that may have gone in a record if one had been created, but there was not a record created at the time.

The important part for records, especially when you're injecting medications or giving someone medications, is to document the dosage, the location, for example, of the injection, the lot and vial for that injection so that if and when there's an issue with it, there's a way to track where that medication came from.

Also -- so it's just really important that that record be there, especially for -- I mean, in

all situations, but especially when administering medication to someone.

And then the records that we received show that about an hour after the procedure, the patient was found unresponsive in the parking lot of the hospital, and that patient then did actually go to the emergency department for care. The patient was found to be in an altered mental state, ended up being intubated for airway protection, and then transferred to Sunrise Hospital later for a higher level of care.

But, really, our concern here is, is the fact that Mr.~McCleve did perform this service that was not authorized at the hospital, did not create a record for it, and we just believe that that is not using reasonable skill -- care, skill, or knowledge ordinarily used under the circumstances. We just don't think a reasonable PA would perform this, and that's really the basis for the malpractice claim, is that a lot of things went wrong here, and it rises to the level of malpractice.

We also have alleged a failure to maintain records. Again, no record was created. There's an importance for those records because that helps with continuation of care for patients. It also helps

document what occurred, if there's any issues or questions.

And the importance of it being timely, of course, is it's a lot more accurate when you make the record at the time that the incident occurred, or within a couple of days. I think a lot of times records are started, maybe, on day one and maybe finalize the next day by the provider, but it's not -- it's not considered a timely record if there's something submitted well after the fact. Again, there's reasons for that that go to public safety.

And then finally, we have alleged, it says "Violation of standards of practice established by regulation." Really, this is about supervision, and, again, the fact that a physician assistant cannot perform services while they don't have a supervisor supervising those services.

And again, all the services they provide have to be authorized by supervising physician, and there has to be an agreement on file with regard to those services and that supervision. And so that is the other allegation that we've alleged.

And then, finally, we've alleged that this was practice beyond the scope of his license.

Again, he wasn't authorized by a supervising physician to provide the treatment that he did to Patient A on April 8, 2023. And so we believe that's practice beyond the scope of his license, because, you know, again, the virtue of -- for PAs, they must have a supervising physician to provide any services. And so to provide services that are not being supervised is beyond the scope of their license, and it would be an unlawful service to provide.

We believe that the allegations contained in the Complaint will be proven by the testimony, the exhibits, and Mr. McCleve's testimony himself. And so we would -- again, we're here for public protection. We're concerned about this case. Whether or not the patient had a bad outcome really isn't the most important thing. The important thing is that it occurred. It shouldn't have occurred. And it's potentially very dangerous.

Thank you.

HEARING OFFICER HALSTEAD: Ms. Zastrow?

MS. ZASTROW: Thank you, Your Honor.

OPENING STATEMENT

BY MS. ZASTROW:

I have to take copious notes because as

you know, some of this is new to us. But what I can unequivocally tell you is that nearly every single thing that Ms.~Bradley just stated is inaccurate, and that results from an incomplete investigation, and that's likely because they were never going to bring these charges. But we don't know. We don't know.

She just told you that there was no record created. That's wrong. Mr. McCleve will tell you, he created a record for the med spa that he was doing this work for. He'll tell you about that. The Board did not subpoena or ask the med spa for the medical records. They didn't even ask Mr. McCleve for the records. In fact, Your Honor, Exhibit 1 in this case is the letter that was sent by the Board to Mr. McCleve saying that a complaint had been filed against him.

And what did the Board put Mr. McCleve on notice of in terms of the complaint? That he injected Botox and that the patient suffered an adverse reaction. That was the claim. The claim was falling below the standard of care.

So when Mr. McCleve submitted his response, which you're going to hear about, those were the issues that he addressed.

Never at any time did the Board say, Where are your records? Did you keep any records? Who were you working for? Never did they ask him who his supervising physicians were. He had a couple. One was a DO.

They also didn't ask him about his competency. He'd been performing and working in cosmetics for years. He had administered hundreds, if not thousands of injectables. The Board would know this if they had done an investigation.

So the very first thing Ms.~Bradley said is wrong. There was a record. They didn't ask for them.

They say he didn't have a supervisor. That's wrong. He had a couple, including Dr.~Sheep, and they didn't call Dr.~Sheep today as a witness. What did they do? They sent him a letter and Dr. Sheep responded to the letter. But he didn't address whether or not Kayle was authorized to do these procedures, because Kayle had been doing these procedures under multiple esthetic supervisors, including Dr. Robert -- Schon, Schon Roberts, Dr. Sheep, and Dr. Winn, a DO. The Board would know this. In fact, one of their exhibits, they list all of the supervisors.

And a PA in Nevada, as Ms. Elmquist herself is going to testify, unless she's untruthful, a PA is able to do all the things that their supervisor allows them to do. And Mr. McCleve did just that.

The statement was that the PA can't perform services while they don't have a supervisor. That's correct. He did. Practice beyond the scope of his license, they never asked him about that. He's going to tell you today, Your Honor, about all of his experience.

They did an incomplete investigation, is what happened with this case, and Mr. McCleve is going to tell you what happened. This isn't about recordkeeping, this isn't about competence; this is about trying to get discipline implemented against Mr. McCleve before the other case comes before you.

Their own evidence supports that, unfortunately, this patient had a reaction that was entirely unrelated to the injection.

Mr. McCleve brought the patient into the ER, in a safe and sterile facility, he conducted a complete medical history, and he injected the guy with an appropriate amount of Botox, something that's done by nurse practitioners, something that's

done all over the state of Nevada and all over the nation in people's homes. And Mr. McCleve did this in a facility.

He had hospital privileges at Vista. He violated Vista's policy. That's what happened. Vista didn't say fell below the standard of care. Vista said, "While you're here working for us, you're here working in ER medicine, we don't want you doing your side business" -- which is what Kayle was trying to do -- "on our facility." And that's why his privileges were suspended.

There's no evidence that his privileges were suspended for any reason other than a policy violation. There was no failure of the standard of care. There was a violation of policy at Vista. There's nothing. Ms.~Elmquist can't possibly testify that that's a violation of the standard of care because it's not.

Factually speaking, Your Honor, their facts are just wrong. One thing I'm going to impress upon Your Honor to keep in mind, the first count for malpractice is NRS 633.014, what does that statute require? It requires a showing that malpractice is established by a preponderance of the evidence. That's their standard: A preponderance

of the evidence.

All of the evidence here is going to show that Mr. McCleve performed within standard of care. He violated Vista's policy, and he lost his privileges for it. Didn't equate to a violation of the standard of care.

If I violate my firm's policy, maybe they have a policy that I return phone calls in 24 hours, and maybe I don't because I'm in trial today and tomorrow. And my partners find out about it and they say, Lisa, we're going to buy you out of your partnership because you're not practicing the way we think you should, that does not mean I committed or engaged in legal malpractice. It means I lost the privilege to work for Garin Law Group, my own firm, because I violated the rules and the policies of my firm.

That's what this is. This is not malpractice. And you'll see that in the medical records.

Preponderance of the evidence, that's what they are required to show. We'll talk about the recordkeeping issue. And again, that's why we're really here. We shouldn't be here.

Mr. McCleve consents that there were

issues with the recordkeeping. And he'll explain that to you. But this was a patient of Oasis Med Spa. They asked him to do this. He did it, he made his recordings, and he'll explain why those medical records were not updated.

But I'll submit to you that the Board has not presented any letter to Oasis. Did they even ask Oasis for their records? Did they even ask Mr. McCleve for his records? I don't see that they did. They want to jump to a conclusion without doing their investigation. We'll talk about that.

Count III is a violation of standard of practice, Your Honor. This is the rule, the rule is NRS 630.306 that's what they cite in their Complaint. Their standard is that the acts -- the following acts constitute grounds for disciplinary action:

"(e) Practicing or offering to practice beyond the scope permitted by law" -- which it was -- "and which the licensee knows or has reason to know that he or she is not competent to perform."

That's the law. They want to ignore that. That's required.

We have to get inside Mr. McCleve's head. What did he know and why did he think that and why

did he believe that after years of a relationship with Dr. Sheep, after years of doing this type of procedure, after doing more invasive procedures, liposuction, for years did Mr. McCleve know or have reason to know that he was not competent and that he should not have performed the Botox injection?

The answer to that is no. To the contrary, he'll explain to you why he was acting within his scope and with supervision.

The last count, Your Honor, also relates to scope, and it talks about performing services, essentially, without a supervising physician. And again, we're going to explain to you and you'll see an absence of records, that the Board was on notice of his supervising physician's -- Ms.~Bradley herself, who I may call as a witness, was asked by Mr. McCleve in March of 2025 -- I'm sorry. March of 2023, Mr. McCleve asked her a question about Botox. She knew what he was doing, the Board knew, and she responded to him. And she put her email in the record, I suspect, to try to prove something else. I don't know.

But what she's doing is proving that the Board had knowledge that he was working with Dr.~Schon Roberts, working with Dr.~Sheep, and

working in the field of cosmetics. That's their own exhibit, Your Honor.

So we'll submit that they have not met their burden. Whether it be the preponderance of the evidence or proving that Kayle himself knew he was doing something he shouldn't have been doing, they are not going to meet their burden today. And we're going to be asking that each of the charges be found without merit and that no discipline be recommended.

Thank you, Your Honor.

HEARING OFFICER HALSTEAD: Thank you, Ms.~Zastrow.

Ms.~Bradley, your first witness?

MS. BRADLEY: I am going to call Ernesto Diaz, and I'm going to text him right now to make sure -- oh, he says he's in the meeting, so I think Ms.~Fuentes can let him in, hopefully.

MS. FUENTES: I'm going to go ahead and admit him right now.

MS. BRADLEY: Thank you.

Good morning, Mr. Diaz.

MR. DIAZ: Hi. Good morning. Can you hear me okay?

MS. BRADLEY: Yes, I can hear you just

fine. I hope Ms. Halstead and the others can as well.

HEARING OFFICER HALSTEAD: Yes, I can.

Mr. Diaz, I'm going to go ahead and swear you in. Can you raise your right hand?

(The oath was administered.)

HEARING OFFICER HALSTEAD: Thank you. Can you please state and spell your name for the record?

THE WITNESS: Ernesto Diaz. E-R-N-E-S-T-O D-I-A-Z.

HEARING OFFICER HALSTEAD: Thank you.

Ms.~Bradley?

MS. BRADLEY: Thank you.

DIRECT EXAMINATION

BY MS. BRADLEY:

Q. Mr. Diaz, who's your employer?

A. I'm employed by the Nevada State Board of Medical Examiners.

Q. What is your job title?

A. I am the chief of investigations.

Q. How long have you had that position?

A. Approximately five and a half years.

Q. Do you have any other experience in investigations?

A. Yes, I do.

Q. Where and when was that?

A. From 1995 and 1998, I was a US border patrol agent, charged with enforcing and investigating federal criminal and administrative immigration law. From 1998 to 2019, I was a US federal agent for the Bureau of Alcohol, Tobacco, Firearms, and Explosives, responsible for investigating United States code violations.

Q. As the chief of investigations for the Nevada State Board of Medical Examiners, what are your duties?

A. My duties as the chief of investigations for the Medical Board is to supervise two deputy chiefs, administrative assistants, investigators, as well as medical reviewers. In addition to the management responsibilities, I also review complaints that are brought to the Board's attention involving possible violations of the Nevada Medical Practice Act.

In reviewing those complaints, they're then assigned investigators, and an investigation is opened.

Q. As part of your supervision of the Board's investigators and other investigations division staff, are you familiar with the process of an

investigation done by the Board?

A. Yes, I am. I also forgot to mention that I do conduct investigations myself.

Q. So when a complaint comes in, what happens next?

A. The complaint is reviewed for several things. Number one, to see if the individual named in the complaint is a licensee of our board. The second thing is to review the information to see if the allegations may lead to a violation of the Nevada Medical Practice Act.

Q. And if both of those answers are true, meaning it's a licensee of the Board and the allegations could violate the Nevada Medical Practice Act, what happens to that complaint?

A. The complaint is then opened into an actual investigation, and it is assigned to an investigator with the Board.

Q. And is there a file created for that matter?

A. That's correct. There's a hard-copy file created, and then there's an investigative process that we uniformly do in all investigations.

Q. Are you familiar with investigation number 23-22820 regarding David Kayle McCleve?

A. Yes, I am.
Q. Just for the record, were you the original investigator on this case?
A. No, I was not.
Q. Do you know who was?
A. Yes.
Q. Can you tell us that person's name?
A. It was senior investigator Don Andreas, was the investigator that this case was assigned to when it was opened in, I believe, April of 2023.
Q. As the chief of investigations, what do you do with cases after an investigator is no longer employed by the Board?
A. Those investigations are then transferred to other investigators, or, in some cases, a supervisor like myself or a deputy chief.
Q. Is this a case that you took over after Mr. Andreas left the Board?
A. No, I did not.
Q. As the chief of investigations, are you familiar with the procedure used by the Board when investigating cases?
A. Yes, I am.
Q. And have you reviewed the file in this case?

A. I have.
Q. Based on your review, does this case appear to be similar to other investigations handled by the Board?
A. Yes, it does.
Q. Okay. And for the record, I'm going to ask you about the exhibits in the record -- in the case that Mr. Andreas, I believe, was involved in.
So -- well, first, what's been premarked as the Board's Exhibit 1, can you turn to that one for me?
A. Sure.
Q. What is this item?
A. Exhibit 1 is what we refer to as an "allegation letter" that is sent to a licensee of the Board when an investigation is opened. And it -- it basically informs them that there is an investigation, and it asks for responses to the allegations that the Board received in the complaint.
Q. And do you recognize the document that is in Exhibit 1?
A. Yes, I do.
Q. Does this appear to be a true and correct copy of the allegation letter that's in the Board's

file for this matter?
A. Yes, it is.
Q. For the record, what's the date of this letter?
A. The date of this letter is June 5, 2023.
MS. BRADLEY: Based Mr. Diaz's testimony, I would ask that Exhibit 1 be admitted into evidence.
HEARING OFFICER HALSTEAD: Ms. Zastrow?
MS. ZASTROW: No objection.
HEARING OFFICER HALSTEAD: All right. Exhibit 1 is admitted.
(IC's Exhibit 1 admitted.)
BY MS. BRADLEY:
Q. So, Mr. Diaz, when we look at this letter, does this appear to match a format that is typically used by the investigations division when sending out allegation letters?
A. Yes. We request a response to the allegations. We also request copies of any patient medical records that may be involved in -- in this investigation, if it does involve patient care.
Q. Okay. And so if you look on this document, and I think if we go to NSBME 001, you look toward the bottom of that page, do you see a

request to provide records included in this letter?

A. Yes. It's in bold. That's correct.

Q. Would you please read it for the record?

A. "In order to determine whether or not there has been a violation of the NMPA, please provide a written response to each allegation noted above, as well as complete health care records for the aforesaid patient. Include copies of any imaging, X-ray, or other films that were produced during treatment of this patient."

Shall I continue?

Q. Yeah. Please read the next sentence.

A. "Please include any further information you believe would be useful for the Board to make a determination in this matter. Please reply to this request within 30 calendar days. Please return the health care records with the signed custodian of records affidavit."

Q. And does the letter also address what should happen if the licensee receiving this letter is not the custodian of the patient records?

A. Yes. We ask for direction or information on who may be the custodian of records for a particular patient so that the Board may issue a proper document request for those records.

Q. Okay. And so we asked for -- it says -- well, will you please read this sentence that starts "If you" on the top of 002?

A. Yes. I'm sorry. I stopped reading on NSBME 1, I should have continued on number 2.

Q. That's fine. Thank you.

A. It says:

"If you were not a custodian of the patient records, please indicate where the health care records can be obtained."

Q. Okay. Mr. Diaz, would you turn Exhibit 2, what's been premarked as Exhibit 2? Do you recognize this document?

A. Yes, I do.

Q. And what is it?

A. This is an email received from Mr. McCleve that was sent to the investigator in this case, the original one, Don Andreas, and it is a response to the letter that Mr. Andreas sent on June 5th -- excuse me. Yeah, June 5, 2023, to the allegations in the letter.

Q. And what's the date on this email?

A. It's Friday, July 21, 2023.

Q. Does this appear to be a true and correct copy of the response that the Board received from

Mr. McCleve and that's contained in the Board's file for this matter?

A. Yes, it is.

Q. And do you have access to Mr. Andreas's email?

A. Yes.

Q. And were you able to verify that this was in his email?

A. Yes.

MS. BRADLEY: Based on Mr. Diaz's testimony, I would ask that Exhibit 2 be admitted into evidence.

HEARING OFFICER HALSTEAD: Ms. Zastrow?

MS. ZASTROW: No objection.

HEARING OFFICER HALSTEAD: Okay. Exhibit 2 is admitted.

(IC's Exhibit 2 admitted.)

BY MS. BRADLEY:

Q. So, Mr. Diaz, have you read Exhibit 2?

A. I have.

Q. Do you see anything in Exhibit 2 indicating that medical records for Patient A were available from a source other than Mr. McCleve?

A. No.

Q. All right. Thank you.

Let's turn to what's been premarked as the Board's Exhibit 3. Do you recognize this document?

A. Yes, I do.

Q. And what is it?

A. It is a letter that investigators send to the supervisor of a physician assistant, whenever there's an investigation on the physician assistant, requesting information as far as their -- their supervising -- supervision with the physician assistant for any particular, say, patient care case or concern.

Q. And is sending something like this a standard part of the Board's investigation when looking into a physician assistant complaint?

A. Yes, it is.

Q. What is the date of this letter?

A. June 5, 2023.

Q. And just for the record, who was this sent to?

A. This was sent to Dr. Andrew Sheep. He's a medical doctor, a licensee of our board.

Q. Okay. And does this appear to be a true and correct copy of the allegation letter that was sent to Dr.~Sheep and is in the Board's file for this matter?

A. Yes, it is.

MS. BRADLEY: Based on Mr. Diaz's testimony, I'd ask that Exhibit 3 be admitted.

MS. ZASTROW: No objection.

HEARING OFFICER HALSTEAD: Thank you. Exhibit 3 will be admitted.

(IC's Exhibit 3 admitted.)

BY MS. BRADLEY:

Q. Mr. Diaz, let's turn to what's been premarked as the Board's Exhibit 4. Do you see that document?

A. Yes, I do.

Q. Do you recognize this?

A. I do.

Q. What is it?

A. This is an email response from Dr.~Sheep to the investigator in this investigation -- investigation, Mr. Andreas, responding to the letter that was sent to him on June 5, 2023.

Q. Okay. And what's the date of this email?

A. This email response is dated June 14, 2023.

Q. And do you have access to Mr. Andreas's email, and you were able to verify that this is in his email box?

A. Yes, I do, and yes, I was.
Q. Is this a true and correct copy of what is in the Board's file regarding this matter from Dr.~Sheep?
A. Yes, it is.
MS. BRADLEY: Based on Mr. Diaz's testimony, I would ask that Exhibit 3 -- 4, excuse me, 4 be admitted as evidence.
HEARING OFFICER HALSTEAD: Ms. Zastrow?
MS. ZASTROW: Yes, Your Honor, I object that this is an incomplete record. This document from Dr.~Sheep is also hearsay. Mr. Diaz is not even a party to this email. And Mr. Sheep -- or Dr.~Sheep, rather, has not been listed as a witness in this case.
HEARING OFFICER HALSTEAD: Ms. Bradley, do you want to respond?
MS. BRADLEY: Yes. So Mr. Diaz has already testified that he was the supervisor of Mr. Andreas. He has access to Mr. Andreas email. He was able to verify that this was, in fact, in the email account that the Board maintained for Mr. Andreas.
Further, hearsay is admissible in administrative hearings. It cannot be the sole

evidence that a trier of fact relies on to prove a necessary element of the case, but it is admissible. And that's from Bigler vs. Real Estate Division, decided by the Nevada Supreme Court. I can give you the exact year it was decided if you'd like.

But essentially the premise in that case, there was an affidavit that was used, admitted in the case, and there was a challenge to that, and the court said the hearsay document was admissible. But again, the trier fact needed to have other evidence to support the claim that was made before finding negatively regarding Mr. Bigler. So we would assert the same here.

We understand it's hearsay. We're not saying it's not, but it's admissible in this context. And it is not the only thing we're going to rely on with regard to the allegations in this complaint and Mr. McCleve's actions on April 8, 2023.

HEARING OFFICER HALSTEAD: What's the name of the case that you just cited?

MS. BRADLEY: It's Bigler vs. Real Estate Division. Here, I can look it up really quick. I usually have it saved in my little book.

It looks like it was a 1979 case, decided

by the Nevada Supreme Court, and I can give you the exact citation. It's -- I don't have the Nevada Reporter, but it is -- in the Pacific Reporter, it's 601 P.2nd, 419, 1979. And I believe it's the -- it's the leading case on this issue regarding the admissibility of hearsay evidence in an administrative matter.

HEARING OFFICER HALSTEAD: Give me a moment. I'm looking up the case.

MS. BRADLEY: Okay. I think I'll pull it up in Westlaw myself.

MS. ZASTROW: Your Honor, I will concede to her representation about what the case says, and I can modify my objection.

HEARING OFFICER HALSTEAD: Go ahead, Ms.~Zastrow.

MS. ZASTROW: I just want the Court to give this document the proper weight and authority, based on what Ms.~Bradley said. This is a hearsay document. It's not the best evidence, and it can't be the sole basis for their position. And I would also point out that they are not calling Dr.~Sheep to testify today.

So I would just ask that this document be given less weight.

HEARING OFFICER HALSTEAD: Okay. Thank you, Ms.~Zastrow. I'm going to pull that case for my information. I appreciate your modification of your objection.

601 P.2nd 419?

MS. BRADLEY: Yes. And then it's the 95 Nevada Reporter 691 as well. And I actually just got it in Westlaw. I can probably send it through the chat function if I can figure out how to do that.

HEARING OFFICER HALSTEAD: 95 Nevada Reporter what?

MS. BRADLEY: 691.

HEARING OFFICER HALSTEAD: Okay. I have it in front of me now. Harold G. Bigler and Dorothy R. Bigler, Appellants, vs. Nevada Real Estate Division, State of Nevada, Respondent.

MS. BRADLEY: Yes.

(Hearing Officer reviewing case.)

HEARING OFFICER HALSTEAD: So I will go ahead and admit the exhibit, and I will expect some corroboration as contemplated, given it's hearsay. I also note that, even though it's hearsay, the evidence rules don't apply strictly to these proceedings.

So with those caveats, exhibit is admitted.

(IC's Exhibit 4 admitted.)

MS. BRADLEY: Thank you.

BY MS. BRADLEY:

Q. Okay. Mr. Diaz, would you please turn to what's been premarked as the Board's Exhibit 8?

A. Okay.

Q. Do you recognize these documents?

A. I do.

Q. What are they?

A. These are medical records of the patient in this investigation that Mr. Andreas requested from North Vista Hospital in May 2023, pursuant to the investigation.

Q. Okay. How did the Board receive these records?

A. They received these from a representative of the hospital. I believe it was one of the hospital attorneys that provided them to Mr. Andreas, who received these by -- let me see. I think these were provided in mailed copies, and he might have also received them, I believe, electronically. But I did look in the case file and did see some hard-printed copies.

Q. Are these -- in this Exhibit 8, do they appear to be a true and correct copy of the records that were received and that you reviewed in the file?

A. Yes, they are.

Q. And the source of them and the request is documented in the Board's file?

A. It is.

MS. BRADLEY: Based on Mr. Diaz's testimony, we would ask that Exhibit 8 be admitted into evidence.

HEARING OFFICER HALSTEAD: Ms. Zastrow?

MS. ZASTROW: Thank you, Your Honor. My only objection is that this is an incomplete record. I don't take issue with these records being admitted, but for the record, it's an incomplete record.

This patient was transferred to Sunrise and actually seen by Dr.~Sheep, and those Sunrise records have not been produced in this case or submitted.

But otherwise, I have no objection.

HEARING OFFICER HALSTEAD: Okay. I note Ms. Zastrow's concern about them being incomplete because they aren't followed by correlating Sunrise

Hospital records. Exhibit 8 will be admitted.

(IC's Exhibit 8 admitted.)

MS. BRADLEY: Thank you.

BY MS. BRADLEY:

Q. Mr. Diaz, would you please turn to what's been premarked as the Board's Exhibit 9?

A. Yes.

Q. Do you recognize this document?

A. I do.

Q. What is it?

A. This is a curriculum vitae of physician assistant Stephanie Elmquist, who conducted the peer review in this investigation.

Q. How did the Board receive this?

A. We received it directly from Ms.~Elmquist when we received her peer reviewed report as well.

Q. Does this appear to be a true and correct copy of Ms. Elmquist's curriculum vitae that was received by the Board?

A. Yes, it is.

Q. Okay. Thank you.

MS. BRADLEY: I'm not going to ask that it be admitted at this time, but I just wanted Mr. Diaz to lay some foundation for it prior to us calling Ms.~Elmquist.

MS. ZASTROW: You can move to admit it. I don't have any objection.

MS. BRADLEY: Oh, okay. I had intended to have Ms.~Elmquist talk about it. But, yeah, then I guess I would ask that Exhibit 9 be admitted into evidence.

HEARING OFFICER HALSTEAD: Based upon the stipulation, Exhibit 9 will be admitted.

(IC's Exhibit 9 admitted.)

MS. BRADLEY: Thank you.

Can I have one second, please, Ms. Halstead, just to review my notes? I apologize.

HEARING OFFICER HALSTEAD: Yes. Take your time.

MS. BRADLEY: I have no further questions for Mr. Diaz at this time, but I would reserve him for later today if we need him in rebuttal.

Thank you.

HEARING OFFICER HALSTEAD: Thank you. Ms.~Zastrow, cross-examination?

MS. ZASTROW: Yes, Your Honor. Thank you.

CROSS-EXAMINATION

BY MS. ZASTROW:

Q. Hello, Mr. Diaz. How are you? We've met before.

A. Yes, ma'am. Good morning. How are you?
Q. Good morning. I have some follow-up questions for you.
Did you just say that Ms.~Elmquist prepared a peer review report?
A. Yes, I did.
Q. Did that report contain a summary of her findings and opinions with respect to Mr. McCleve?
A. Yes, it does.
Q. Do you know why that report is not given to Mr. McCleve in order that he may understand the claims against him?
A. I don't believe it's required to be provided to him.
Q. Right. So if you're -- you're basically being told what the lawyers are telling you. Correct?
A. Well, my experience in five and a half years, we've never provided a peer review report to a respondent or licensee in an investigation.
Q. Oh, I'm fully aware of that. I'm fully aware of that.
So it's your position that she can testify today and we get to hear the findings?
A. That's my --

MS. ZASTROW: Dragonfly in front of me. I'll take that as a sign.

BY MS. ZASTROW:

Q. It's your position that Ms.~Elmquist can put her findings today on the record, but that we don't have the right to know those findings prior to today. Is that your understanding?

MS. BRADLEY: I'm going to object. I don't think Mr. Diaz is the one that makes these decisions and decides who gets to testify. He's not a lawyer, so I guess I would say, I think that's a question for the Hearing Officer and the courts.

MS. ZASTROW: No, Your Honor. This is cross-examination. He just said he's been an investigator, he's familiar with the process, he's reviewed all of the records, and he knows the process for completion of the investigation. He's the perfect witness.

HEARING OFFICER HALSTEAD: So my understanding was you just -- I don't remember how you prefaced your question. I think you asked if it was his position that the report does not get produced. Is that correct? Was that your question, Ms Zastrow?

MS. ZASTROW: He either has a position or

he doesn't. He's the chief investigator, Your Honor.

HEARING OFFICER HALSTEAD: Right. So I don't know -- I think it's sort of a question with, maybe, the wording. I don't know if you want to -- I agree he's not the one that makes those calls. So maybe if you want to ask if it's his understanding.

I just don't know that there's foundation for him to make the calls about whether that report gets distributed or not; I think that's the IC's call.

So I think it's just maybe an issue with the wording, but I understand your point and I know where you're going and I think you're entitled to make your record of that.

I don't want to direct you to re-ask your question in any certain way, but I think that was the problem that the IC had with the question.

MS. ZASTROW: Your Honor, I'll reserve that question for Ms.~Elmquist and move on.

HEARING OFFICER HALSTEAD: Thank you.

MS. ZASTROW: And reserve my right to call Ms.~Bradley as well.

BY MS. ZASTROW:

Q. You said there's a file in this case;

right?

A. Yes.

Q. Okay. To prepare for your testimony, did you review the file?

A. I reviewed it thoroughly, yes.

Q. Are there any documents or information in that file that has not been put in front of you today?

A. Based on the NRS confidentiality of the investigative proceedings as well as investigations, I can't comment as to what is in the actual investigative case file or not.

Q. Sir, you're not the lawyer, you don't get to wade your own objections or refuse to answer. If the Hearing Officer says you don't have to answer, we'll respect her order.

But I asked you a question, and there was no objection.

MS. BRADLEY: I'm going to object now if you're going to keep asking him about the investigative file.

Ms. Halstead has already ruled on the issue of the report. We've provided you copies of every exhibit we intend to admit today. And I just don't know that what's in the file other than that

is relevant, and it's not admissible.

MS. ZASTROW: You don't get to decide what's relevant, is my question, and let me ask that question.

BY MS. ZASTROW:

Q. Mr. Diaz, in reviewing the information in the file, who decides what's relevant?

A. As far as what is introduced as exhibits or as -- I don't understand the question, ma'am.

Q. In your job -- let me ask another question.

Do you make any findings in your role as investigator?

A. No. I'm just a fact-gatherer.

Q. Okay. So your job is limited to getting information. Correct?

A. Yes.

Q. Okay. You don't, then, take that information and review it and provide opinions to counsel or other people. Is that correct?

A. I obtain the relevant information. I produce it. It goes through the investigative process. If the Investigative Committee feels that there is enough there to warrant a formal complaint, that is their decision.

But I just merely gather the facts and provide the information for the process.

Q. Okay. And you're not here today to state an opinion as to whether or not the charges that were brought against Mr. McCleve are valid or not? You're not opining on that; correct?

A. That's correct, I'm not.

Q. You're simply called to talk about what the investigation consisted of and to authenticate documents. Is that correct?

A. That's correct.

Q. Okay. So who decides what information to be requested? Is that you or is that someone else?

A. Well, we have a uniform process in our investigative -- in our investigations. And as I mentioned earlier, it involves reviewing the complaint or information that has come before the Board, sending an allegation letter, which we did, sending follow-up letters, if it involves a supervising physician over a physician assistant, requesting relevant medical records, obtaining all that information, and then providing it -- or moving it through the investigative process until it is presented before an Investigative Committee of the Board.

Q. My question is more narrow: Who decides what medical records to request, you or someone else?

A. Well, the investigator does, based on the information that's presented to us.

Q. So is that you in this case or is it someone else?

A. Well, this was not my case when it started. It was investigator -- senior investigator Don Andreas's case.

Q. So Andreas made the decisions whether or not to request specific information, not you?

A. That's correct.

Q. Okay. Can you please look at Exhibit 2 -- actually, before you do that, can you please look at Exhibit 1?

A. Okay.

Q. After the first full paragraph, there's a statement that says "It is alleged." Do you see that?

A. Yes, I do.

Q. And it says "number one," and then it says "number three," maybe that's a typo. But there were two allegations; correct?

A. Correct.

Q. Okay. And the first allegation is that Mr. McCleve injected Botox at North Vista Hospital without hospital authorization. Is that correct?

A. That's what's in the allegation letter that the investigator composed in sending that, based on the complaint or information we received. That's what we do as investigators.

Q. So that's -- those were the allegations against him that he injected Botox without hospital authorization. Correct?

A. That's what's in the allegation letter, correct.

Q. And the second allegation is that complications arose. Do you see that?

A. I do.

Q. That would imply potential malpractice. Correct?

A. Well, I'm not a medical doctor, ma'am. I can't make that determination if there's malpractice or not.

Q. I didn't ask that question. I'm asking about the allegations against Mr. McCleve. It looks to me like it was alleged that he violated the hospital privileges. Correct?

A. Correct.

Q. And the second allegation is that he may or may not cause complications to the patient. Correct?

A. Based on what's in the allegation letter, yes.

Q. Okay. Where in the allegation letter is it alleged that he was practicing outside his scope?

A. If you give me a minute and let me go through this allegation letter.

Well, on the second page it references possible violations of the Nevada Medical Practice Act. That should encompass every violation under the Nevada Medical Practice --

Q. No, sir. No, sir. That says he could violate any and all laws in Nevada. Correct?

A. I'm not sure what you mean, ma'am, by any and all laws of Nevada. I'm just referencing the laws and violations under the Nevada Medical Practice Act.

Q. I don't believe you've answered my question. Where in this notice to Mr. McCleve is he told that the Board is investigating whether or not he was practicing outside his scope? It's not in there, correct, he was not told that?

A. It is not in the letter dated --

Q. Correct.
A. -- (indiscernible) 2023.
Q. At the time of this letter, June 5, 2023, does the Medical Board have records of supervising physicians?
A. Yes. We should have records of anything that's on file with the Board.
Q. So it's possible the Board was aware at this time of Mr. McCleve's supervising physicians. Correct?
A. Well, the investigator would have queried the licensing database to see if there was a supervising physician on record with -- with the Board.
Q. Right. And and nowhere in this letter is he put on notice, at least, that he was practicing without a supervisor. Correct?
A. Not in this letter, correct.
Q. Right. And that's probably because the Board was well aware that he had a supervisor at this time.
Were you aware that DOs can also supervise physicians assistants?
A. I am aware of that, yes.
Q. Okay. Can a physician's assistant be only

supervised by a DO in Nevada?
A. We do have -- I believe they can.
Q. What did you do to investigate whether or not Mr. McCleve had a DO supervising physician?
A. I did not start this investigation. I did not query the DO board, so --
Q. And neither did Mr. Andreas.
A. -- (indiscernible) investigator did. I can't --
Q. And neither did --
A. I'm sorry, ma'am. Go ahead.
Q. Neither did Mr. Andreas. Correct?
A. I can't speak to what he did or did not do.
Q. Well, maybe he did and he knew that Mr. McCleve was supervised by a DO. But we don't know, right, because he's not called here today to testify. Correct?
A. I don't know if he did or didn't.
Q. Can you please turn to Exhibit 2?
HEARING OFFICER HALSTEAD: Ms. Zastrow, just for my benefit, because you know I'm a lawyer, not a doctor. DO, when you refer to a "DO," are you're referring to a doctor of osteopathic medicine?

MS. ZASTROW: Yes. A doctor of osteopathic medicine. The same as an MD, except a different medical training, and some would say more.

HEARING OFFICER HALSTEAD: Okay. I just want to make sure, for the record, that that's clear. Thank you.

MS. ZASTROW: Thank you. Apologies. A doctor of osteopathic medicine.

BY MS. ZASTROW:

Q. Have you turned to page 2 -- or, I'm sorry, Exhibit 2?

A. Yes, ma'am.

Q. You said you've reviewed this letter. Correct?

A. Yes.

Q. This is Mr. McCleve responding to the allegations in which he's been advised. Correct?

A. Yes.

Q. And he was told he may have committed malpractice and he practice outside the scope -- or, I'm sorry, and he violated Vista's procedural rules. Correct?

A. He was informed in the allegation letter of what -- based on the information that came to the Board, yes.

Q. Right. And he tells you in this letter exactly what occurred. Correct?

A. He tells us --

Q. Or he tells -- look, let me make this easier. When I say "you," I'm talking about the investigator because we don't have him here today. We have you. Is that fair?

A. Sure.

Q. Mr. McCleve, without counsel, wrote a very empathetic, a very honest, a very transparent response to the Board's inquiry. Would you agree with that?

A. I read his response several times. He provided his response as requested.

Q. Yes.

Look at page 2, it says in "NSBME 004." Do you see that?

A. Yes.

Q. In the second paragraph -- I'm just going to summarize -- Mr. McCleve explains that he was performing -- or he was going to be doing work on this patient at the request of the med spa. Correct?

A. I read that part in his response, correct.

Q. Right. And he tells the Board he's doing

the work for the med spa. Right?

A. Yes. He does mention that in his response, that's correct.

Q. They called him, they asked him to see a patient. Right?

A. And according to his response, that's what he states.

Q. And Mr. McCleve went to the med spa but was unable to do it there at the location because it was locked. Right?

A. That's his statement, yes.

Q. Why weren't the medical records requested from the med spa? What investigation was done when Mr. McCleve told you actually who he was working for and what he was doing? Where are those records?

A. Well, he never specified which med spa.

Q. Did anybody ask him?

A. According to his response, he just referenced a med spa, but he didn't specifically -- if he put this much information in his response, it would have been reasonable for him to include the information, as the letter states that was sent to him June 5, 2023. "If you are not the custodian of records, please inform us of where we may obtain patient records," and obviously he does not provide

a full and complete name or contact information for that med spa that he references multiple times in his response.

Q. And this investigation was taking place in the spring and summer of 2023. Correct?

A. Yes. It was opened in April or May of 2023.

Q. And to complete this investigation, letters were sent to Dr.~Sheep, letters were sent to Vista, and then the Board received responses. And the last response -- well, let me say this: The last request by the Board, Exhibit 5, was sent on November 20, 2023. Do you see that?

A. Well, let me -- let me turn to Exhibit 5.

Well, that's a letter that was sent to Dr.~Richard Harris by --

Q. You haven't answered my question. That was the last request for information?

A. To Dr. Harris, I believe. But far as --

Q. That was the last --

MS. BRADLEY: Just for the record -- and I'm sorry -- we haven't actually admitted that yet because Ms. LaRue, I believe, sent that letter and we were waiting.

I don't want to object to you talking

about it, and maybe we could admit it now, if you'd like us to, Ms.~Zastrow, I just intended to ask Ms. LaRue about it since she sent it because she took over the investigation.

MS. ZASTROW: I don't know that that's an objection. I didn't move to admit it. I can, assuming you don't object. Exhibit 5, I'd move to admit it.

MS. BRADLEY: Yeah. I don't object. I just want to make sure the record is clear, because I was nervous we were talking about something that hadn't been admitted yet.

MS. ZASTROW: I didn't ask for it to be. I asked the witness to review it to look at the timeline.

HEARING OFFICER HALSTEAD: I just want you guys to all be careful about talking over each other because the court reporter's having trouble recording it. I don't know if you see, she's nodding yes. So, please, just be careful to let each other finish or make some signal or something so that she can get a clear record because we're tending to jump over a little bit of each other at this point.

So thank you for being cognizant of that.

MS. ZASTROW: Yeah. Ms.~Smith, I don't be afraid to tell us to shut up. On Zoom, it's kind of hard to tell if someone's pausing or not. You won't hurt our feelings if you tell us to shut up.

HEARING OFFICER HALSTEAD: Okay. But she won't do that, so we've just got to be cognizant for her.

Where are we with Exhibit 5? Are you stipulating to that admission or no?

MS. BRADLEY: I mean, I would stipulate to it being admitted. That's fine with me.

HEARING OFFICER HALSTEAD: Ms.~Zastrow, do you want it admitted?

MS. ZASTROW: Yeah. I said I would move to admit it, so yes.

HEARING OFFICER HALSTEAD: Okay. Based on the stipulation, I'm admitting Exhibit 5.

(IC's Exhibit 5 admitted.)

BY MS. ZASTROW:

Q. So, Mr. Diaz, the last request from the Medical Board sent to anybody in this case for information was sent to Vista Hospital on November 20, 2023. Do you see that?

A. I see the letter in Exhibit 5, yes, that you're referencing.

Q. Did the -- at that point in time, was the Board satisfied with all the information it had and decided not to move forward with charges against Mr. McCleve?

A. I would say that when this case was reassigned in August 2023 to Deputy Chief Johanna LaRue, who will be testifying later, she did some follow-up, additional investigation, but I will let her testify as to if any other documents were sent out.

Q. Okay.

A. Because it was her case at that time.

Q. Right. But you're investigating the case, Mr. McCleve is responding to what he thinks the allegations are, he's telling you about the med spa, and no one did any follow-up investigation to try to get medical records from the med Spa. Correct?

A. I can't answer that because I don't know what the investigator may have done or didn't do at the time.

Q. Oh. You have the file, I thought. I thought you had the file?

A. I do have a file.

Q. Okay. Is there anything in the file that shows --

A. I can't testify as to what is in the investigative file.

Q. Oh, you sure can, unless you're instructed not to by the Hearing Officer. I've asked you a question. There's been no objection.

Is there anything in your file that shows that medical records were requested from the med spa?

HEARING OFFICER HALSTEAD: Mr. Diaz, go ahead and answer the question.

THE WITNESS: There was nothing in the file requesting medical records to a medical spa that we had no name of.

BY MS. ZASTROW:

Q. And no one asked the name of the med spa; correct?

A. I'm not aware of Investigator Andreas asking for the name of the medical spa.

Q. Is it possible -- just is it possible that at some point in late 2023 or early 2024, the Medical Board decided we're not going to pursue this case anymore?

MS. BRADLEY: I'm going to object. I don't know how Mr. Diaz would know that. I mean, he already testified that he doesn't make decisions

about whether or not cases go forward.

MS. ZASTROW: Your Honor, I would object to Ms.~Bradley coaching the witness. If she wants to interject an objection, such as calls for speculation, but I would ask that she not coach the witness.

I asked him a question. If he can't respond, he can tell me he can't respond.

HEARING OFFICER HALSTEAD: Mr. Diaz, if you can answer, answer. If you can't, state why.

THE WITNESS: Sure.

I cannot, answer as to why the Board may have moved forward with the investigation or not. All I can answer is that as an investigator, our job is to gather the facts and the information and responses and medical records and present the case to the Investigative Committee.

BY MS. ZASTROW:

Q. When was the case presented to the Investigative Committee?

A. I would have to check our agenda -- Investigative Committee agenda --

MS. BRADLEY: I'm going to object because Investigative Committee proceedings are confidential pursuant NRS 630.336, as well as the statute. I

believe there might be another reference in the NRS regarding confidentiality of the Investigative Committee proceedings.

HEARING OFFICER HALSTEAD: Ms. Zastrow, you asked as to the date that it was presented. Correct?

MS. ZASTROW: Yes, Your Honor.

HEARING OFFICER HALSTEAD: Ms.~Bradley, I want to clarify. Do you think that the date is confidential or just the -- well, the proceedings was discussed, in the proceedings?

MS. BRADLEY: I mean, the statute says that -- let me find it, and I apologize.

I believe it's just in 336. I'm struggling.

HEARING OFFICER HALSTEAD: While she's looking for that --

MS. BRADLEY: I mean, this is what it says --

MS. ZASTROW: Your Honor, my response to that is that --

HEARING OFFICER HALSTEAD: Hold on, hold on.

MS. BRADLEY: So I'm looking at 630, NRS 630.336, and this is number 1. "Any deliberations

conducted or vote taken by the Board or any Investigative Committee of the Board" -- oh, okay. That's -- I'm sorry, that's the examinations. I apologize.

HEARING OFFICER HALSTEAD: So, Ms.~Zastrow, while she's looking for that, are you just trying to establish a timeline for purposes of your argument that you're going to make?

MS. ZASTROW: Yes, Your Honor. And the existence of their meeting is public record. It is not confidential. What is confidential is the discussion. They are allowed to go -- it does not violate Open Meeting Laws if they go into a confidential discussion.

But the existence of the time of the meeting is not confidential.

HEARING OFFICER HALSTEAD: Okay. And that's what I understand your question to be.

Ms.~Bradley, do you want to expand on that at this point?

MS. ZASTROW: In fact, Your Honor, I would say -- sorry to add -- they actually tell -- typically they tell the target or the respondent when the meeting occurred in the complaint. I can pull this complaint. I'm not sure it's there.

MS. BRADLEY: I'm sorry, I had myself minimized.

Pursuant to NRS 630.311, the Board does publish a summary, which is just numbers, of what occurred at an Investigative Committee every quarter. So it talks about the complaint's reviewed, the complaint's referred, you know, the complaint's closed. That is a report that is public and is posted on our website and addressed at every board meeting.

I'm not sure I'm super -- I mean, the date itself may not be confidential, but I guess I'm concerned that saying what was -- you know, essentially saying this was presented on this day, that's talking about the substance of that meeting because we don't -- we don't normally talk about -- a matter may be on multiple agendas, in fact, before a formal complaint is filed.

And so I'm going to pull up the report that we have on the internet, our website, regarding the proceedings.

But I guess I'm still concerned about the date in as much as we're tying it to a complaint. Certainly the date that the Investigative Committee meets and the statistics that we put on our website

that we're required to put on there, that is public information. But I think more than that, it is not public information.

And so we would still object regarding 639.336 and 311; 311 is the one that talks about what has to be reported regarding the meetings.

HEARING OFFICER HALSTEAD: Okay. So Ms.~Zastrow asked as to the date.

Ms.~Zastrow, I'm going to let you ask that question and have it answered. But I'm just cognizant of taking a break for the court reporter's benefit and for everyone else's comfort. How much longer do you think you have? I'm just debating if we go to 10:30 or if we take a break now.

MS. ZASTROW: I apologize. I can't say because it depends on his answers. I would say I should be done in ten minutes.

HEARING OFFICER HALSTEAD: Okay. Ms.~Smith, are you okay going until 10:30?

THE REPORTER: Yes. Thank you.

HEARING OFFICER HALSTEAD: Okay. So, Ms.~Zastrow, I'm going to allow your question about the date, and then we'll get to 10:30, I'm not holding you to that, we'll just take a break at 10:30.

BY MS. ZASTROW:

Q. Mr. Diaz, when did this matter go before the Board for determination?

A. I do not -- I do not have the exact date, but I can tell you the Investigative Committees meet four times a year; they meet in February, May, August, and November.

Q. Which is a matter of public record; correct?

A. Correct. The meetings are public record. The -- I shouldn't say the -- meeting information itself, but the meetings.

Q. When are you told that a complaint is going to be pursued against a respondent?

A. Are you referencing a formal complaint?

Q. Yes.

A. I'm made aware of it when the Investigative Committee approves the filing of a formal complaint.

Q. This Complaint was not filed until November of 2024, years after the initial complaint. Why did it take so long?

A. Well, it would technically be one year; the case was opened in May 2023, and if you're considering November 2024, that's a little over --

exactly one year, not years.

And it does take time to gather information. A lot of it depends on how soon we get it back from either respondents or other witnesses or individuals that we request information from, as well as any medical records. There is some lapse in time, depending on how quickly we get the information that is requested by the investigator.

Q. Was the investigation complete in January of 2024?

A. I would say when an investigation is presented to the Investigative Committee, that is when we feel we have all the information necessary.

However, the Investigative Committee may also request additional information, so it's up to the Investigative Committee.

Q. In this case, was the investigation complete in January of 2024?

A. I can't answer that.

Q. Is it in your file? Why can't you answer?

A. There is no sheet that we have that says the investigation is complete. It's all based on the relevant information the investigator obtains, and then it's presented -- it has to be -- go through an investigative process before it's

presented.

Q. When was it presented? When was this case presented to the Investigative Committee?

A. I would have to look through the case file or through the -- our internal database that maintains case information. I don't --

Q. I would ask you to do that on a break. Okay? You have access to that --

A. I --

Q. You have access to that information. Correct?

A. Yes.

Q. And it's something you're able to obtain. Right?

A. Yes.

Q. You'll be able to tell us when this case was presented to the Investigative Committee?

A. Yes. And if it was presented more than once.

Q. Did you ever discuss this case with anyone at the Board in the -- let's say, January, in the winter of 2024?

A. When you mean "discuss this case with," with whom?

Q. Anyone?

A. I guess the answer would be -- would be no.

Q. So once the investigation is complete and turned over to the Investigative Committee, you have no additional role unless they want more information. Is that correct?

A. That's correct.

Q. In this case, did they come back and ask for more information?

A. I can't discuss that. That's part of the proceedings that we have.

MS. BRADLEY: I mean -- and, yeah, I have the statute up. I mean, it says "The proceedings of the committee are confidential, not subject to the requirements of the Open Meeting Law." And then, again, this is the one I was citing to regarding the posting of the summary.

I mean, the hearing officer has already said he has to say the date that it was presented, but I don't think he can talk about what they may have said or not.

MS. ZASTROW: That's okay.

BY MS. ZASTROW:

Q. It's clear that they didn't ask for additional information because the last request for

information was in November of 2023. Correct?

A. I cannot answer that, ma'am. I did not have this case reassigned to me for any additional follow-up. If there's another witness that's going to be speaking who had this case assigned to them, they may be able to answer that question for you.

Q. So to your knowledge -- is it your testimony that you don't know if any additional information was requested after November of 2023?

A. In going through the case file, I believe -- again, I'm not sure how much I can discuss what's in the case file or not. That's the concern that I have.

Q. Well, you have counsel for that, sir.

HEARING OFFICER HALSTEAD: So I think he already answered the question. And I also think this is a very fine line.

So, Ms. Zastrow, do you have the information you need or do you need to pursue this further?

MS. ZASTROW: Well, if he -- if his position is that another witness is going to tell me when this case was submitted to the committee, or if he's going to come back on the record after the break and give us that information, then I can move

on to my other questions for him, which aren't that many, and then maybe we could take a break. I'll leave that up to everybody else.

HEARING OFFICER HALSTEAD: Go ahead, Ms.~Zastrow.

MS. ZASTROW: Thank you.

BY MS. ZASTROW:

Q. Mr. Diaz, I'm trying to understand why the Board waited so long to file a complaint in this case. Do you know why?

A. That's not my decision to make or understanding of why.

Q. So you -- do you know why, is my question.

A. No. Every case is different, ma'am. There's no set timeline, you know, three months, six months. Every investigation is different based on the information that's gathered and the -- when it's presented to the Investigative Committee.

Q. Listen, my question is, do you know why, you, not hypotheticals, not each case is different. In this particular case, do you know why they waited until November 2024 to file a complaint?

A. No.

Q. And when you're doing investigations, do you find it helpful to have all the information

before you submit your case for review?

A. If I have information in the complaint or additional information that's presented to me or provided to me, I will try to obtain it and include it in the investigative -- or include it before it's presented to the Investigative Committee.

Q. I thought you said it was your duty to investigate. So you're the one asking for information. Correct?

A. Correct. We investigate the complaints that are presented to us.

Q. Right. So isn't it important to have all the information before the case is submitted to the review panel -- or the Investigative Committee? I'm sorry.

A. It's important to obtain as much information that we're made aware of that's out there.

Q. Okay. In this case, for example, the Complaint says that the patient suffered an adverse reaction to a Botox injection. Did you read that?

A. Yes, I did.

Q. Did you know that that's false?

A. Again, that's in an allegation letter that was sent.

Q. Did you know that that was false?
A. I am not a medical doctor, ma'am. I can't answer whether there was an adverse reaction or not. We merely sent the letter out that was provided to -- it was --
Q. Conducting an investigation, the purpose is to determine truth or falsity. Correct?
A. The purpose of our investigation is to gather the information, any witness statements, medical records, and then present it to the Investigative Committee for their decision.
Q. The truth. Correct?
A. Again, our job is to gather the information, ma'am, and present it to the Investigative Committee.
Q. Okay. So you had no idea that that allegation in the Complaint is false?
A. That was -- was presented to us, that was written in an allegation letter, that the investigator at the time sent to Mr. McCleve.
Q. So if you only rely on the investigation letter, what's the point in conducting an investigation? What you just said is, well, there were allegations made, so that's what we presented.
What's the point in doing an investigation

if you're not trying to get to the truth? What's the point?

A. The point of our investigation is to get as much information as we can and let the deciding body make that decision, which would be the Investigative Committee.

Q. Did you read the medical records?

A. I went through the records that are as an exhibit in this -- for this case.

Q. You know the patient was -- well, if you read the medical records, you know that he did not sustain an adverse reaction, then. Correct?

A. I'm not qualified to make that -- to answer that.

Q. You're the one making the decision, what information to seek and what not to seek. Correct?

A. At the time of this investigation, I was not the assigned investigator.

Q. When I said "you," I meant you, as, you know, the royal you, the investigator. The investigator made the decision what information to seek and what not to seek. Right?

A. Investigators, yes, they pursue the information that they have --

Q. Okay.

A. -- from the complaint and try to obtain as much information as they can based on what they know or what they have in front of them.

Q. This patient was transferred to Sunrise Hospital. Did you know that?

A. Yes, I did.

Q. Wouldn't it be helpful to have those records?

A. They were obtained.

Q. No they weren't.

A. The investigation, the investigator requested records from Sunrise Hospital.

Q. No, no, no. Sunrise Hospital records were not obtained. Wait a minute. Are you telling me that you have Sunrise medical records?

A. Ma'am, now you're getting me to speak to what's in the investigative file.

Q. Yeah, you have Sunrise medical --

MS. BRADLEY: I'm going to object. We have not offered Sunrise medical records as an exhibit in this case, and it's not relevant to the allegations contained in the case.

The case talks about -- and it doesn't even say that it was an adverse reaction in the Complaint.

MS. ZASTROW: Yes, it does. Read it.

MS. BRADLEY: I'm looking at the --

HEARING OFFICER HALSTEAD: Okay. Don't talk over each other, please. If someone is speaking, the other person needs to wait until they're done.

MS. BRADLEY: The formal Complaint says that Patient A was not registered at the time, he did not have a supervising physician, he did not create documentation. I'm just looking at the factual allegations. The last one says that records show that on April 8, less than one hour after the procedure, the patient was found unresponsive in the parking lot, wheeled into the emergency room in an altered state, intubated, transferred by ambulance to Sunrise.

We don't allege anything that happened at Sunrise. We don't even allege that -- I mean, we included a fact that we have, which is that he was found unresponsive. I don't see in my factual allegations in the Complaint that I even say that the fact that he was unresponsive in the parking lot had to do with this injection.

Our concerns are regarding the manner in which the injections were occurring. Our position

is it would have been unlawful even if the patient was not found in the parking lot later.

We don't have to show damages. We're not actually alleging damages here; we just included a fact regarding what happened to the patient after this, I guess, just to show, I guess, you know, the full picture that we had.

We don't think Sunrise is relevant. We haven't introduced those into evidence. We don't intend to. I don't know why it would be relevant, because Mr. McCleve didn't do anything at Sunrise with regard to these injections. He does say he went there and talk to the patient, but, I mean, these injections occurred at North Vista. He says that they did.

And so we included what we believe was relevant. We don't have to include everything that's obtained in an investigation. And in this case, we included what we intend to admit and what we believe supports the allegations in our case.

MS. ZASTROW: Your Honor, I would just state for the record that Ms.~Bradley just engaged in all kinds of witness coaching, argument. That's for us to discuss with you, Your Honor.

I'm asking this witness a question, and

Ms.~Bradley is now saying that details in the Complaint, which are that this patient was found unresponsive, are irrelevant. If it's irrelevant, why is it in the Complaint? It's in the Complaint because the whole point of this is to inflame and create a false story.

And now I'm hearing that they have Sunrise medical records in their file, and they decided whether or not they were relevant. That's the problem here. That's the denial of due process. That's the inability to defend a case.

What if there's information in those Sunrise records that helps my client? Mr. --

MS. BRADLEY: No --

HEARING OFFICER HALSTEAD: Don't talk over each other. Ms.~Zastrow, you were speaking. You can finish what you were saying.

MS. ZASTROW: I would just ask that Ms.~Bradley -- and I will do it myself, Your Honor -- refrain from coaching the witness and making arguments designed to get in his brain and tell him how to respond.

HEARING OFFICER HALSTEAD: Okay, so --

MS. BRADLEY: Ms. Halstead, may I respond?

HEARING OFFICER HALSTEAD: Briefly.

MS. BRADLEY: I'm just trying to say -- I'm looking at the allegations and the factual allegations -- we say that the patient was found face down. Nowhere in our Complaint that I can see does it say that there was an adverse reaction from the injections.

Ms. Zastrow has had our exhibits and our documents since May of 2025. If she wanted to admit or have the Sunrise documents be admitted, she could have asked for them from Sunrise, and she could have had them as an exhibit in her case today.

We already disclosed what we thought was relevant, what we thought we needed to prove our case, and we provided that to her earlier this year. Again, if she wanted them, she could have got them herself and included them.

HEARING OFFICER HALSTEAD: Ms. Zastrow, I'm going to give you the final word, and then I'm going to chime in.

MS. ZASTROW: Thank you, Your Honor. I have no subpoena power, as Ms.~Bradley is fully aware. I also had filed a motion to continue this case, and we were all in a posture of not knowing whether or not we were going to proceed.

It is the Board's burden, by a

preponderance of the evidence, to prove malpractice. The lack of a complete investigative file turns sharply against the nature of their investigation.

So I'm not sure what objection Ms.~Bradley is making. I'm asking questions. The point of my questions are to highlight the incomplete investigation and the fact that no complaint was filed until Mr. McCleve prevailed on his other matter.

That's the point of the questions, Your Honor.

HEARING OFFICER HALSTEAD: Ms. Zastrow, you said that you filed a motion to continue this case?

MS. ZASTROW: Yes.

HEARING OFFICER HALSTEAD: When was that filed and where is that?

MS. ZASTROW: We -- it was filed -- I'll have to pull it up on a break. But what happened was Mr. -- or Ms.~Contine and I spoke, and we agreed by stipulation to continue this proceeding. And so it mooted the motion to continue at that time; however, I said, "I reserve the right to seek to continue."

A lot of things have happened this week

very, very quickly, including the Supreme Court's stay. Prior to that stay, Ms.~Contine insisted, insisted that these cases be combined. I had really no expectation until two days ago that they wanted to proceed. And I respected Your Honor's order that we were going to proceed, and that's why we were here.

HEARING OFFICER HALSTEAD: But to be clear, no one asked me to move to continue this. I said, "Are we going on this matter or are we not?" I was told we are and dates were given to me.

MS. ZASTROW: I'm not absolutely not making a record. I'm not -- I'm not contending that there was a lack of ruling on that motion. I'm not contending that. I'm just simply, as a practical matter, explaining the procedure of how we got here, because Ms.~Bradley said that since I've had documents for three months, I should have asked for Sunrise's medical records.

I was simply laying out the history of how we got here, Your Honor, not implying that there's any motion that hasn't been ruled upon.

HEARING OFFICER HALSTEAD: Thank you.

So my understanding was, we've gone down the road a little bit, but you were asking if

Sunrise records have been obtained and considered. There was no objection. Frankly, I was waiting for an objection, and it didn't come until after that answer was given. So the answer was given that there were Sunrise medical records, but then Ms.~Zastrow continued questioning along those lines and then the objection came.

So there's an issue with what has been alleged on the Complaint and what the Board is actually relying on with regard to the allegations.

And so my understanding is -- there's a simple way to -- I can make a ruling and limit what I'm going to consider, or I don't know if the Board wants to take this time to -- if it's only relying on the Botox injections being given and not the fact that the patient was found unconscious in the parking lot, that that can be stricken.

Ms.~Bradley, how do you want to deal with that at this point if you're not relying on those allegations?

MS. BRADLEY: I'm relying on every allegation in my Complaint. Number 7 does not say that the falling down, being unresponsive in the parking lot had to do with an allergic reaction. It's a fact that later, after these injections, this

is what was found. He was found there. They treated him. He went to Sunrise. We have medical records in Exhibit A that substantiate that he was found, that he was treated, that he went to Sunrise.

However, the allegations that we allege are violations of the Medical Practice Act have to do with malpractice, have to do with failure to maintain records, and then the violation of standards of practice established by regulation.

Nowhere in these that I'm seeing or even in my facts do I say this occurred and the patient suffered an allergic reaction, and that's why it's malpractice. It didn't say that.

And again, if there was -- I mean, the fact is this patient was found unresponsive, we don't have to prove why, we don't have to prove damages, and we're not even saying the reaction was an allergic reaction. We're not saying that. That was in the allegation letter that was initially sent by Mr. Andreas, but that's not what we put in the Complaint.

The information regarding North Vista just, I think, puts context in. The objections occurred there. Less than an hour later, he was found unresponsive in the parking lot and received

services at the emergency department. But again, this isn't a civil action where we have to prove damages. We're not intending to and --

HEARING OFFICER HALSTEAD: Okay. So Ms. Zastrow --

MS. ZASTROW: Can I respond?

HEARING OFFICER HALSTEAD: Sure.

MS. ZASTROW: The Complaint -- this is the problem with not giving us information. All we have in terms of notice is what is stated in the Complaint. And here is what it says:

"Records show that on April 8, 2023, less than one hour after the procedure, Patient A was found unresponsive in the parking lot. He was wheeled into the emergency room in an altered mental state, intubated for airway protection, and transferred by ambulance to Sunrise Hospital for a higher level of care."

Directly below that is the claim for medical malpractice. I'm not a rocket scientist, but I can read, the implication is that the malpractice related to a reaction from the injection. And if it's not, it should not be included in this Complaint nor a part of this procedure because the prejudicial value greatly

overwhelms the probative value.

They created this rabbit hole with the allegations in their Complaint, which, by the way, as I was questioning Mr. Diaz, that allegation, the implication of that allegation is false. The implication is that it was caused by my client, Count I, malpractice.

HEARING OFFICER HALSTEAD: Okay. So, Ms.~Zastrow, frankly, I think -- your point is well taken. But what I hear from Ms.~Bradley is that's not how they're proceeding, that's just a fact that they found him there, and that's probably what brought this to everyone's attention that this happened.

So I am only going to go by what is pled and what is brought before me and what is presented with regard to the allegations as pleaded.

So there is no allegation in here -- and Ms. Zastrow, again, I do agree with you that that's an implication, but there's no allegation that this Botox led to that. And I'm not hearing Ms.~Bradley say that that is going to be presented.

So you you're both well-versed attorneys. You get this from judges all the time. We're not a jury. We can ferret this out. So I -- again, that

is the implication, but I'm not going to take it as that. I'm going to take it as there has been no adverse reaction related to the Botox pled, and I don't anticipate that's going to be proven-up. And I don't anticipate that's going to be any basis for any of the claims in this count.

I'm going to take that allegation as a factual allegation of why, maybe, this incident was discovered, but I'm not going to consider those allegations for anything to do with the merits of the counts.

MS. ZASTROW: Thank you. Can I make just one more statement for the record with regard to the complaint?

HEARING OFFICER HALSTEAD: Yes.

MS. ZASTROW: Under Count I, malpractice, at number 11, the Complaint reads:

"As demonstrated by the above-outlined facts, respondent failed to use reasonable care, skill, or knowledge."

That was all we were placed on notice of. That's it. There's no allegation that his technique is improper. There's no allegation that the injection itself fell below the standard of care. What we were put on notice of is that this patient

was intubated, and that statement was incorporated under the cause of action.

So if Ms. Elmquist, who is their standard of care expert, intends to testify to something else, we have absolutely no notice of it, no knowledge of it.

HEARING OFFICER HALSTEAD: So, Ms. Zastrow --

MS. ZASTROW: We can address that later.

HEARING OFFICER HALSTEAD: Yeah.

-- to your point, the rest, that -- there's continuation of that paragraph:

"When he injected Patient A with botulinum toxin sometime during the emergency department shift at North Valley Hospital, did not conduct a medical examination or history, and failed to create any medical documentation related to his treatment of Patient A."

And so that is the -- that is the allegations that I will focus on, so let's move on from here.

We didn't take our break. It's 10:47, so we're going to come back at 11:00.

MS. ZASTROW: Thank you.

(Recess from 10:47 a.m. to 11:00

a.m.)

HEARING OFFICER HALSTEAD: Okay. It's 11:00. We're back on the record In the Matter of the Charges and Complaint Against David Kayle McCleve, PA-C, case number 24-42281-1. We were in the midst of cross-examination.

MS. CONTINE: Hearing Officer Halstead?

HEARING OFFICER HALSTEAD: Yes.

MS. CONTINE: I'm sorry. It's Ms. Contine, not really for the record. Ms. Bradley just got called on another matter, not really -- for two minutes. Sorry for the inconvenience.

HEARING OFFICER HALSTEAD: Okay. I was calling the case, 24-42281-1. Ms.~Contine has indicated that Ms.~Bradley is not able to come right back on time and will just be a couple of minutes. We'll remain on the record, and we'll give it a couple of minutes for Ms.~Bradley return.

MS. CONTINE: Thank you.

MS. ZASTROW: I have a question. Who is Ian Cumings?

HEARING OFFICER HALSTEAD: Mr. Cumings is another IC attorney. They often sit in on these hearings and watch each other's cases.

MS. ZASTROW: And then I have another

question for Ms. Smith. Can you clarify, I know I asked you this already, but it sounded like this is being videoed. Is there a video or no video?

THE REPORTER: The -- I'm a participant in this meeting as well, and I asked permission to record this for my backup recording for myself. And I don't believe that it is recording video. The option that I selected was record audio, and I believe it says -- Zoom says, "Recording in progress," when I hit to record.

MS. ZASTROW: Yes. That's what -- I just wanted clarification, because I thought this is being videoed, but it's just audio.

THE REPORTER: As far as I know. Correct.

MS. FUENTES: This is Mercedes. Ms. Smith asked permission, it comes up with a dialogue on my end to ask permission, and it did request for an audio recording, just to help clarify that it is only an audio recording.

MS. ZASTROW: No objection. No problem. I was just curious.

HEARING OFFICER HALSTEAD: All right. I see Ms.~Bradley is back.

MS. BRADLEY: Sorry about that.

HEARING OFFICER HALSTEAD: Ms. Bradley,

are you prepared to proceed?

MS. BRADLEY: I am.

HEARING OFFICER HALSTEAD: All right. So we remained on the record, and we were in the midst of cross-examination of Mr. Diaz by Ms. Zastrow.

Mr. Diaz, I remind you you're under oath.

MS. ZASTROW: Thank you, Your Honor. I only have a couple of just clarifying points. And I apologize that this seems like it's been asked and answered, but there's been a lot of dialogue back and forth.

BY MS. ZASTROW:

Q. Mr. Diaz, can you just confirm that you are not here to offer any opinions as to the claims against Mr. McCleve?

A. That's correct.

Q. Just procedural -- or just a question about the Board's complaint process. Are you aware that the complaints are public record?

A. Yes.

Q. Are the answers public record?

A. Answers, ma'am?

Q. Um-hmm.

A. Can you elaborate on "answers"?

Q. If a respondent files an answer to the

complaint, is that also public record?

A. Are you referencing the initial complaint the Board receives or the formal complaint filed that is public record?

Q. That's a good distinction. I apologize.

A. That's okay.

Q. The formal complaint that initiates the disciplinary hearing is public record. Correct?

A. That I'm not sure of.

Q. Well, the investigative complaint is not public record. Right? The letter that was sent to Mr. McCleve, that's not public record. Right?

A. The allegation letters are part of the investigative case file. Those are not public record, correct.

Q. But the Complaint that we were just reading earlier, that is a matter of public record. Correct?

A. Yes.

Q. You don't know if other filings are also public record, but you do know the complaint is public record?

A. I do know the complaint is public record. Settlement agreements approved by the Board and licensees are public records. Findings of facts,

conclusions of law are public record. But I don't believe the response to the formal complaint from a licensee or respondent is public record.

Q. That's my understanding. It's not, is it?

A. No. I agree with you. I don't think it is either.

Q. So the allegations made by the Board are out there for the public to see, but the responding physician's defenses are not. Correct?

A. Yes. Again, correct.

Q. Do you know if charges were brought -- and when I say "charges," I mean administrative charges, not criminal -- against Dr. Sheep with respect to this case?

MS. BRADLEY: I'm going to object. That's not relevant. Dr.~Sheep is not a named respondent in this case.

HEARING OFFICER HALSTEAD: Ms. Zastrow?

MS. ZASTROW: He's absolutely a witness. They introduced his letter. He was Mr. McCleve's supervising doctor. He carries the burden to make sure that Mr. McCleve performs within standard. So they introduced his exhibit; I want to know if charges -- it's a matter of public record.

And, Your Honor, it's your decision

whether or not you find it relevant. You may not find it relevant.

HEARING OFFICER HALSTEAD: I don't find it relevant. I have to focus on the charges against Mr. McCleve. I'm sustaining the objection.

MS. ZASTROW: Okay. I don't have any more questions.

HEARING OFFICER HALSTEAD: Ms.~Bradley, redirect?

MS. BRADLEY: Thank you. Sorry, I have a lot of notes here.

REDIRECT EXAMINATION

BY MS. BRADLEY:

Q. So I just want to clear a couple things that were on cross.

First of all, I believe that there was a question about Exhibit 5, and the question indicated that Exhibit 5 was sent to Vista Hospital. Mr. Diaz, can you look at Exhibit 5 and see who that was addressed to? I just want to make sure the record is clear. That's 011.

A. Exhibit -- excuse me. Exhibit 5 was sent to Dr. Richard Harris on November 20, 2023.

Q. Thank you.

And again, there was a lot of cross

regarding Exhibit 1. And if we look at the bottom of page 001 -- and I believe this was asked and answered but I just want to clarify on redirect, given that there was a lot about it on cross -- is there a request for -- on 001 and 002, a request for the name and the location of health care records if the licensee is not the custodian of records?

A. Yes.

Q. And is that easily identifiable in this letter?

A. It's in bold and underlined. Yes.

Q. Okay. And on cross, you read -- you read part of Exhibit 1 -- if you look at 001 number 1, right underneath "It is alleged."

A. Yes.

Q. Would you read that entire sentence? I think you stopped at "authorization" on cross.

A. "It is alleged you had your hospital privileges suspended by the MEC, Medical Executive Committee, at North Vista Hospital for injecting Botox for a similar substance in a, quote, "private patient," unquote, "in the hospital without hospital authorization, patient registration, patient consent, or documentation of your competency."

Q. And so if we look at this letter, is there

an allegation that -- or something informing Mr. McCleve that perhaps his competency to perform the service is at issue?

A. Yes.

Q. And why would he know that?

A. Well, based on the information that the investigator received at the time regarding the hospital privileges and Mr. McCleve being suspended, the investigator included in that requesting documentation of competency if Mr. McCleve was competent or not to perform those types of procedures.

Q. And you've read Exhibit 2?

A. Yes.

Q. Is there any reference to supervision by a doctor of osteopathic medicine supervising Mr. McCleve?

A. No. Just reference to Dr.~Sheep.

Q. Okay. And let's look at that statement. Would you first read the first sentence on page 004?

A. "In the early part of this year, I spoke with Andy Sheep, MD, about providing medical services to various med spa settings."

Q. Okay. And then if we go down to the second paragraph on page 004, starting with "Prior,"

could you read that sentence.

A. "Prior to solidifying a formal written agreement with any med spa owner or Dr.~Sheep but after acknowledgment of the appropriateness and commitment to offering this service, I was frantically contacted by a med spa owner and was strongly influenced to provide service to one of her VIP patients."

Q. So in reading this, is it your understanding that the medi spa -- I mean, is there a name of the medi spa mentioned?

A. No.

Q. And do you see that anywhere in Exhibit 2?

A. No.

Q. And does this say that Dr.~Sheep is supervising him with regard to this service?

A. No.

Q. And why do you say that?

A. Because in the response --

MS. ZASTROW: Objection. Speculation, Your Honor. Mr. McCleve is the only one who can answer that question.

HEARING OFFICER HALSTEAD: But the question was, why did he -- why did Mr. Diaz testify the way he did? He answered the question, and then

she said, Why did you say that? So he's entitled to say why he said that.

Go ahead, Mr. Diaz.

THE WITNESS: Okay. Thank you.

Based on Mr. McCleve's own written response, he states that there was no formal written agreement with any spa owner -- medical spa owner or Dr.~Sheep.

BY MS. BRADLEY:

Q. Mr. Diaz, would you go to page 003 in Exhibit 2? It's that first page.

A. I'm sorry. Exhibit 3?

Q. Exhibit 2, page 003. It's the first page of Exhibit 2.

A. Okay. Yes.

Q. And I believe on cross, there was a question about an involvement of an attorney in Mr. McCleve's response. Can you look at the cc line on that email on the top there?

A. Yes. So the email address in Exhibit 2 to Investigator Andreas -- from Mr. McCleve to Investigator Andreas on July 21, 2023 also cc's Brett Whipple and Lisa Zastrow.

Q. And who are those individuals, if you know?

A. I do not know who Brett Whipple is, but I believe Ms.~Zastrow is the same Ms.~Zastrow that is representing Mr. McCleve.

HEARING OFFICER HALSTEAD: For the record, I want the parties and Counsel to know that I am familiar with Mr. Whipple, and I know him to be an attorney and assuming that's the same Mr. Brett Whipple, but there is a Brett Whipple who is an attorney.

BY MS. BRADLEY:

Q. So I believe you were asked regarding whether or not the formal complaint that was filed is a public record. So if we look at -- Mr. Diaz, have you seen NRS 630.336 before?

A. Yes, I have.

Q. Maybe could you pull it up on your computer?

A. I'm sorry, I have a hard copy if I can --

Q. Oh, yeah.

A. -- use this. I'm still kind of old school on this stuff.

Q. Yeah. I was just hoping that you would look at NRS 630.336, sub 5 and also sub 4.

HEARING OFFICER HALSTEAD: NRS 630 what?

MS. BRADLEY: Point 336, sub 4 and sub 5.

THE WITNESS: Right. I have it in front of me.
BY MS. BRADLEY:
Q. So does that refresh your recollection as to whether the formal complaint that's filed is a public record?
A. Yes.
Q. And is it a public record?
A. The formal complaint is, yes.
Q. And what about other documents that are filed in the case?
A. Under subsection 6? No.
Q. Well, what about 4 and 5? It says -- if we will get number 4, would you read number 4?
A. "Except as otherwise provided in Subsection 5 and NRS 239.0115, a complaint filed with the Board pursuant to NRS 630.307, all documents and other information filed with the complaint, and all documents and other information compiled as a result of an investigation conducted to determine whether to initiate disciplinary action are confidential."
Q. Okay. And then please read number 5.
A. Number 5:
"The formal complaint or other document

filed by the Board to initiate disciplinary action and all documents and information considered by the Board when determining whether to impose discipline are public records."

Q. So, Mr. Diaz, are you familiar with whether or not filed documents in a case are provided to the Board for review when deciding on a case at a board meeting?

A. I believe just the -- as far as adjudicating a case and settling the case?

Q. Well, what the Board sees when the matter is adjudicated, because those documents are part of the public record, so what do you know what's provided to the Board at a board meeting?

A. I believe the formal complaint and the settlement agreement.

Q. I'm talking about an adjudication, not a settlement case. Because you're right, in settlement agreement, there's less information.

But if we look at the record that's provided to the Board and an adjudication and that's also made available to the public, what information is contained in that?

A. I believe information from the hearing and the hearing officer's findings.

Q. Okay. What about other things that are filed, such as an answer to the complaint?
A. Oh, that that should be included as well for the --
Q. What about motions that were filed in the case?
A. I believe all of that is available to the Board members to make adjudication.
Q. And are those available -- if you know, you may not know, are those available in the public file at the Board meeting?
A. That I do not know.
MS. BRADLEY: All right. I think that's all that I have for Mr. Diaz at this time.
HEARING OFFICER HALSTEAD: All right. Who's your next witness?
MS. BRADLEY: Ms. Johnna LaRue.
THE WITNESS: Do I need to log off?
MS. BRADLEY: I think you have to leave, Mr. Diaz. I'm not sure. I think if you just leave the meeting, there's a little button on the bottom that says "leave" with a door.
THE WITNESS: Okay. Thank you.
MS. ZASTROW: Your Honor, I was going to say, if Ms. LaRue is simply being called to

authenticate other documents, I don't have any objection to admitting the documents for the record.

HEARING OFFICER HALSTEAD: Ms. Bradley?

MS. ZASTROW: I don't know -- I don't know what the point of her testifying when we already had the chief investigator. I'm just trying to help speed things along.

MS. BRADLEY: The primary purpose of her was to admit a few documents I don't have into evidence. But I also think she may be able to answer the question that I just posed to Mr. Diaz regarding what information is available to the Board when a matter is adjudicated because I believe that was a function that Ms. LaRue actually performed prior to her promotion to deputy chief of investigations.

And so she may be a little more clear on what's public and what's not with regard to filed documents in a matter.

MS. ZASTROW: After a matter is adjudicated, not during the pendency.

MS. BRADLEY: Well, Mr. Diaz -- I mean, I can call rebuttal witnesses on this if I need to. My assistant does public records on behalf of the Board. I'd be glad to have her talk about what she

routinely provides when requested.

HEARING OFFICER HALSTEAD: Okay. Let's go back to the exhibits real quick. So it looks like we're -- what's -- Exhibit 7 has not been admitted as well as 10.

MS. BRADLEY: Well, my note was we did admit 5, and that was something that Ms. LaRue prepared. And then Exhibit 6, I don't believe has been admitted.

HEARING OFFICER HALSTEAD: Correct. So --

MS. BRADLEY: Then Exhibit 7 is also something that Ms. LaRue, I was going to ask about and get admitted.

HEARING OFFICER HALSTEAD: Okay. So, Ms. Zastrow, are you going to stipulate to admission of Exhibits 6, 7, and 10 or any portion of those?

MS. BRADLEY: I didn't offer 10. I wasn't really planning on it. I was planning on having Ms. LaRue -- I mean, because she's not, I don't think, relevant. I don't know that she has information on 10 anyway.

Exhibits 5, 6, and 7 were the ones that I intended to use Ms. LaRue for. I have a couple questions for her on them, aside from just admitting them.

HEARING OFFICER HALSTEAD: Okay. I understand.

So excluding 10, 6 and 7, are you stipulating to the admission of those records, Ms. Zastrow?

MS. ZASTROW: Yes, Your Honor, with the same objection in terms of the amount of weight and credibility that Your Honor should give those exhibits, which we can make in closing arguments. But I don't have any other objections.

And I would stipulate to the admission of Exhibit 10 also.

MS. BRADLEY: I didn't ask for it. I don't know that I will. So I --

MS. ZASTROW: You put it in --

HEARING OFFICER HALSTEAD: Well, we'll cross that bridge when we get there, if we do.

(IC's Exhibits 6 and 7 admitted.)

So, Ms. LaRue, can you please raise your right hand to be sworn?

MS. ZASTROW: Ms. Halstead, can I ask a quick question?

HEARING OFFICER HALSTEAD: Yeah.

MS. ZASTROW: She just -- she just released Mr. Diaz, and he's on that last email. She

put it in her exhibits, I presumed that she was going to admit it. I would have moved to admit it with him, so I don't want to have to recall him.

MS. BRADLEY: I told him that I didn't have any more questions for him at this time, and I apologize if I did not say it. My meaning by saying "at this time" meant that I was going to reserve the right to recall him in a rebuttal case, should we need to. He's not fully excused from the case. He is in the building, and he will not leave for the day until he checks with me to make sure we don't need him this afternoon.

So he's not -- he's not gone, and he's not listening anymore online.

MS. ZASTROW: I just don't know why -- I would just move to admit Exhibit 10. I don't know what the problem is, but ...

HEARING OFFICER HALSTEAD: Well, if Ms.~Bradley doesn't want to stipulate to that, then it's going to have to come up in the normal course of the case.

MS. ZASTROW: Understood. Thank you.

HEARING OFFICER HALSTEAD: All right, Ms. LaRue, can you raise your right hand again? Thank you.

(The oath was administered.)

HEARING OFFICER HALSTEAD: Can you state your name and spell, please?

THE WITNESS: Johnna LaRue, J-O-H-N-N-A L-A-R-U-E.

HEARING OFFICER HALSTEAD: Thank you.

Ms.~Bradley, your witness.

MS. BRADLEY: Thank you.

DIRECT EXAMINATION

BY MS. BRADLEY:

Q. Ms. LaRue, who is your employer?

A. Nevada State Board of Medical Examiners.

Q. What is your job title?

A. Deputy Chief of Investigations.

Q. Have you had other positions with the Board?

A. Yes.

Q. What were those positions?

A. Administrative assistant, investigator, senior investigator, and compliance officer.

Q. How long have you been employed with the Board?

A. Nineteen years.

Q. Let's talk about your investigations experience. How did you obtain that experience?

A. On site. I've been working in this division since 2006.

Q. Are you familiar with investigation number 23-22820, regarding David Kayle McCleve?

A. Yes.

Q. And what was your role with regard to that case?

A. I was the investigator that was reassigned to this case once the previous investigator, who's no longer with the Board, left. The case had to be reassigned to someone in order to follow through and make sure that everything was complete. So I was the investigator it was reassigned to.

Q. And Exhibits 5, 6, and 7 have been stipulated and admitted, but just for the record, what is Exhibit 5?

MS. ZASTROW: Object to the duplicative nature of this testimony.

HEARING OFFICER HALSTEAD: Well, she hasn't asked for anything about it yet, so she's just laying a foundation for some questions.

Go ahead, Ms.~Bradley.

BY MS. BRADLEY:

Q. What is Exhibit 5, Ms. LaRue?

A. This is my request for Dr. Richard Harris

to respond in regards to his supervision of PA McCleve.

Q. And what prompted you to send this letter to Dr.~Harris?

A. When the case was reassigned to me and going through all the documentation, I noticed that there was never a response. He'd been contacted previously by the previous investigator but there was no response sent in, so I attempted to inquire and find out -- you know, and to get his response.

Q. Okay. And if we look at Exhibit 7 -- and that's also been admitted -- is this a document that you actually printed from the Board's database?

A. Yes.

Q. And if I look at the top two folks listed there, can you just say their names for the record?

A. Andrew Evans Sheep and Richard Wayne Harris.

Q. Okay. And then if we look at the date of association and the date of disassociation, could you put those on the record for me?

A. Andrew Evans Sheep date of association, 3/16/21; date of disassociation, 6/27/23. Richard Wayne Harris date of association, 2/2/2017; and date of disassociation is 4/17/23.

Q. Okay. Can you tell us what those dates mean and how that impacted your sending a letter to Dr.~Harris?

A. So these dates -- the date of association is the date that we receive a supervising or collaboration agreement between a physician and a physician assistant, which is required by statute. The date of disassociation would be the day that that collaboration agreement or supervision agreement would be terminated.

And the reason that these two were relevant is because of the date of the incident is within the date range of association and disassociation, which is why there was nobody else involved. We didn't inquire with any of the other people that are listed on this list.

Q. Okay. Do you know what filed documents in a formal complaint are public?

A. As far as I'm aware, the only documents that are actually released to the public are the formal complaint. That's the only thing that --

Q. What about --

A. There's suspension orders, all of those things, they're all a matter of public record, and they're on the website. Is that what you're asking?

Q. Well, I just wanted to know if there's documents filed in a case, like, if you know what, maybe, they are and which of those are public?

A. The only documents that I'm aware of that are a matter of public record are a formal complaint filed, a settlement agreement and adjudication, a summary suspension, those documents that are listed on our website as formal disciplinary action doctrine documents.

Q. All right. Thank you.

Can you summarize the response that you received from Dr. Harris in Exhibit 5?

A. The response in?

Q. Exhibit 6. I apologize.

A. Okay. Yeah. Okay. So I asked him about his duties as a supervisor. He basically let us know that his supervision was confined to the medical staff office at North Vista Hospital for Mr. McCleve.

And then in my second question -- give me a second and I'll reference. Sorry, my copy is light. I can't read it. So then we asked him to provide some information about the patient, and he gave me a brief rundown of the patient.

Do you want me to read his response?

Q. No, I just -- I think you've already answered. I mean, his summary was that his supervision was related to the provision of services in the emergency department?

A. Correct. At North Vista Hospital.

MS. BRADLEY: Okay. Those are all the questions I have for Ms. LaRue at this time. I do reserve the right to recall her in rebuttal and also to redirect after cross-examination.

MS. ZASTROW: I just have a couple of questions.

CROSS-EXAMINATION

BY MS. ZASTROW:

Q. Did you say Dr. Harris didn't respond initially?

A. Yes. It took me several months to locate Dr.~Harris.

Q. And isn't that a violation of the Board rules for physician not to respond to an inquiry?

A. Well, he's not -- he's not a respondent in this case, so --

Q. I didn't ask that question, ma'am. I asked if it is against the rules to fail to respond to an inquiry from the Board?

A. As far as I understand, there are statutes

that relate to that.

Q. That's my understanding as well.

Dr.~Harris, he was at North Vista; correct?

A. Yes. He's -- his supervision was related to their practice at North Vista Hospital.

Q. And just for the record, earlier I referred to him as "North Vista," but that's because Dr.~Harris was the ER physician at North Vista. Correct?

A. Correct. From what I understand, yes.

Q. You said that -- if you look at exhibit -- the exhibit that listed all the supervisors, which is Exhibit 7, can you turn to Exhibit 7?

A. Yeah.

Q. Okay. Do you see there, Dr.~Sheep is the very first one?

A. Correct.

Q. And the date of association is what?

A. March 16, 2021.

Q. And you said that date represents the date you would have received the collaboration agreement, the written agreement between Dr.~Sheep and Kayle. Correct?

A. That's the -- that's my understanding of

the process. I don't work in the licensing division, so I can't be, you know, definitive.

But that is my understanding of the process, yes.

Q. And that's mine as well.

And you would have done that research and you wouldn't provide testimony that you knew to be false. Correct?

A. Yes, that is correct.

Q. Yes. So that's the date that the Board was provided the written supervision agreement between Dr.~Sheep and Kayle. Correct?

A. That would be correct.

Q. Can you turn to Exhibit 2? I don't know if you have that in front of you or not.

A. I do.

Q. Okay. Exhibit 2 is the response from Kayle to an inquiry about the allegations against him. If you could turn to page 2 of that response?

A. Yeah.

Q. Have you read this letter before?

A. I have.

Q. Okay. I'm going to ask you some more questions in a minute. He says in that second paragraph, "Prior to solidifying a formal written

agreement with any med spa owner or Dr.~Sheep." Do you see that?

A. I do.

Q. Is it possible that Mr. McCleve was talking about a business, opening a business?

A. I'm sorry, I don't think I can answer that question. I don't know what Mr. McCleve would have been referring to. I can only --

Q. Fair enough. And I'll ask Mr. McCleve.

But you already know that the Board had his written supervision agreement. Correct?

A. Yes. He had two written supervision agreements.

Q. So if Mr. McCleve is explaining to the Board what was going on and why he was doing Botox, and he references this statement here, it's possible that he's talking about a business venture. Correct?

A. I can't answer that. I can't understand between what --

Q. Understood.

Are you the investigator on another case brought against Mr. McCleve?

A. I don't think I can answer that at the moment either. That's not relevant to this --

Q. Yes, you can. You can answer that. It's a matter of public record. A complaint has been filed against him.

Are you involved in that case?

THE WITNESS: Sarah?

BY MS. ZASTROW:

Q. No, don't ask Sarah. Sarah is not --

THE WITNESS: Sarah? I'm sorry, I don't feel comfortable --

HEARING OFFICER HALSTEAD: And don't talk over each other. This is getting recorded by a court reporter.

Mr. Zastrow, are you talking about the '23 matter with the same --

MS. ZASTROW: Yes, Your Honor. It's a matter of public record. I simply want to know if she is the investigator on that case as well.

HEARING OFFICER HALSTEAD: You can go ahead and answer that.

THE WITNESS: Okay. Give me a second, because I, honestly -- because all of those cases were not mine to begin with. I'd have to --

BY MS. ZASTROW:

Q. Okay. Let me rephrase.

Are you aware of it?

A. I'm aware there's a formal complaint filed, yes.

Q. And are you aware that it was pending at the time that Mr. McCleve was sent this letter on June 5, 2023, about a new potential complaint against him? Are you aware of that?

A. I'd have to look at the date. I'm sorry. You're asking questions that I don't have this information in front of me; the only thing I have in front of me is relevant to this particular case.

So you would need to give me time to look into that.

Q. Right. Well, it was the Board that wanted to combine these cases, so I'll ask Mr. McCleve.

But if I told you that at the time he received this allegation, there was another case pending before him, you would have no reason to disagree with that, would you?

A. At the time that he received this formal complaint --

Q. No, not formal complaint.

A. Okay.

Q. Exhibit A, the allegation.

A. I'm sorry, I can't confirm these dates for you.

MS. BRADLEY: I just wanted to clarify. You said "Exhibit A," do you mean Exhibit 1, the allegation letter, was there another matter pending? Is that your question?

MS. ZASTROW: Sorry. I'm used to being the defendant and using A. As I said, I'll withdraw the question. I'll ask Mr. McCleve.

BY MS. ZASTROW:

Q. Did I hear you correctly that the public record in this case is the formal complaint filed by the Board. Correct?

A. Yes. That's what's the -- what's a matter of public record.

Q. So the public doesn't get to see the doctor, or in this case, Mr. McCleve's answer or his motions or his defenses. Correct?

A. That's correct.

MS. BRADLEY: I'm going to object. That's not what Ms. LaRue said --

MS. ZASTROW: She answered.

MS. BRADLEY: -- she said she didn't know what else was public.

MS. ZASTROW: She answered "that's correct."

MS. BRADLEY: Okay. Well, I'm going to

call a rebuttal witness that will actually tell us what happened.

HEARING OFFICER HALSTEAD: Okay. So here's the deal. I don't want to presume what this is being offered for. I think it's going to go to motive of the Board and how Mr. McCleve has been treated, but it doesn't go to the merits of the case.

So you guys can certainly make a record of it, but it's not helping me, and I'm not going to consider it other than to the extent that it's argument for someone else to review once I make my findings of fact, because my role here today is to see if the allegations in the Complaint are sustained or not by preponderance of the evidence.

I want to make that clear to you so that you can deduce how far down this road you guys want to go.

MS. ZASTROW: I understand, Your Honor. And as you just said, this is very important to the record, and I appreciate your candor and what you're going to consider and not consider. But it's our position that the Board's motive is absolutely 100 percent relevant. But I appreciate that you're only going to look at the evidence that's before you

and not to motive.

I don't have any more questions for this witness.

HEARING OFFICER HALSTEAD: Redirect, Ms. Bradley?

MS. BRADLEY: I do have redirect.

REDIRECT EXAMINATION

BY MS. BRADLEY:

Q. Ms. LaRue, would you please look at Exhibit 4.

A. Yeah.

Q. Will you read -- well, first, just for the record, what is the Exhibit 4?

MS. ZASTROW: Your Honor, I object. This is -- she didn't go into this. This is not --

MS. BRADLEY: It's already been admitted.

MS. ZASTROW: This is not --

HEARING OFFICER HALSTEAD: Don't talk over each other. Ms. Zastrow, you finish what you're saying, and, Ms.~Bradley, you can respond.

MS. ZASTROW: Let me finish my objection. Thank you, Your Honor.

She didn't go into this on her examination. This is not redirect. She's opening a whole new issue.

HEARING OFFICER HALSTEAD: Well, I don't -- Ms.~Bradley?

MS. BRADLEY: Well, as you know, NRS 233B does not limit cross-examination, what was discovered on redirect; however -- or, I'm sorry, does not limit cross-exam to just what was covered on direct. In cross-examination, there were questions about Dr.~Sheep and his supervision agreement and what it may entail.

Dr.~Sheep has a statement provided to the Board in number 4 regarding that, and I just wanted to ask her about that first paragraph there. I think it might help us understand some of the issues related to what Ms. Zastrow asked her on cross.

HEARING OFFICER HALSTEAD: Go ahead, Ms.~Bradley.

And Ms. Zastrow, you can have recross.

MS. ZASTROW: Thank you. And I just -- just for the record, another objection is that this witness is not a party to this email. And Mr. Sheep is -- Dr.~Sheep, rather, is not here to testify. And I already have an objection as to the weight and credibility of this document.

HEARING OFFICER HALSTEAD: I understand that, and I appreciate you putting it on the record.

Ms.~Bradley?

REDIRECT EXAMINATION

BY MS. BRADLEY:

Q. Ms. LaRue, have you seen this record before?

A. Yes.

Q. Is this a part of the Board's record regarding the investigation in this matter?

A. Yes.

Q. Will you please read the first sentence on page NSBME 9 under "Yes, sir."

A. "I entered into a supervisory relationship with Kayle McCleve, PA on March 12, 2021 to supervise his care at My Shape Lipo."

Q. Are you aware of any allegations contained in the complaint that we're talking about today occurring at My Shape Lipo?

A. No.

Q. In your experience, do physician assistants sometimes have more than one supervisor?

A. Yes.

Q. And do those supervising agreements talk about where the care will be provided or what kind of care?

A. No. I don't think they provide what kind

of care. I'm sorry, it's been a long time since I've seen this supervision. I think it gives an address of the location that they're supervising.

Again, I don't work in the licensing division, so I don't -- I'm not familiar with those forms.

MS. BRADLEY: I have no further questions for Ms. LaRue at this time. We would reserve the right to recall her on rebuttal.

And I do think I'm going to need to call Ms.~Linn later today to talk about the supervision forms and records.

MS. ZASTROW: Your Honor, I have one more -- since she reopened, I just have one more quick question on cross, if you would allow it.

HEARING OFFICER HALSTEAD: Go ahead.

MS. ZASTROW: Thank you.

RECROSS-EXAMINATION

BY MS. ZASTROW:

Q. In this letter, Dr.~Sheep says that he failed to provide the Board notice with respect to him leaving My Shape Lipo. Is that correct?

A. Give me just a minute to make sure I read it all so I can be clear.

I don't see where he specifically says he

failed to -- to send it. There's reference to, in retrospect, that he should have contacted the Board.

MS. ZASTROW: Thank you. No more questions.

HEARING OFFICER HALSTEAD: Ms. Bradley, who's your next witness?

MS. BRADLEY: My next witness would be Ms.~Elmquist. I need to text her. I apologize. I'll let her get on the line. Sorry, I'm a little distracted.

HEARING OFFICER HALSTEAD: Do you want to call her now or -- I know it's almost noon, would you prefer to take a break and just start earlier, say 12:45?

MS. BRADLEY: Whichever you prefer, Ms. Halstead and Ms. Zastrow, works for me. I was just about to text her.

HEARING OFFICER HALSTEAD: How long do you anticipate her testimony will take?

MS. BRADLEY: I feel like it's going to be longer, given cross-exam. I mean, I only have -- not very many, and I want to walk her through her review and her thoughts on the case. I think I can do that in probably 30 minutes, but I don't know that we'll be done with her in 30 minutes.

HEARING OFFICER HALSTEAD: Ms.~Zastrow, would you prefer to take the break now and come back at 12:45?

MS. ZASTROW: I would defer to Your Honor and the court reporter.

HEARING OFFICER HALSTEAD: Okay. I really don't want to -- I don't want to break up the testimony if we don't have to, so let's go ahead and do that. Let's go ahead and break for an afternoon break and come back at 12:45. Does that work for everybody?

MS. ZASTROW: So we're taking a full hour?

HEARING OFFICER HALSTEAD: I don't need an hour. I was trying to accommodate you guys.

MS. ZASTROW: I don't need an hour.

HEARING OFFICER HALSTEAD: Ms.~Bradley?

MS. BRADLEY: I'd like an hour because I'm probably going to leave the building to get food. I'm sorry that makes you shake your head, Ms.~Zastrow.

HEARING OFFICER HALSTEAD: What if we compromise and maybe do 45 minutes, Ms.~Bradley, or is that pushing you too far?

MS. BRADLEY: No. That works for me.

HEARING OFFICER HALSTEAD: Okay. So if we

do 45 minutes, we'd be back here at 12:30. Does that work for everybody?

MS. ZASTROW: Yes.

MS. BRADLEY: Yes. And I'm telling Ms. Elmquist right now.

HEARING OFFICER HALSTEAD: Okay. We'll go off the record.

(Recess from 11:45 p.m. to 12:33 p.m.)

HEARING OFFICER HALSTEAD: All right. We're back on the record In the Matter of the Charges and Complaint Against David Kayle McCleve, PA-C, case number 24-42281-1. We broke for lunch. The IC was going to call Ms. Elmquist, and that was put on hold pending our return from lunch at 12:30. It is now 12:33.

Ms.~Bradley, please call your witness.

MS. BRADLEY: I do call Ms. Stephanie Elmquist. I'm not sure if she's in the lobby. Hopefully she is.

MS. FUENTES: This is Mercedes. I do not see her in the lobby yet to be admitted, so I'll just give it a moment.

MS. ZASTROW: Your Honor, while we're waiting on her, can I correct something I said

earlier for the record?

HEARING OFFICER HALSTEAD: Sure, Ms. Zastrow. Go ahead.

MS. ZASTROW: So earlier, when we were talking and I was trying to provide a timeline, I was referencing the motion to continue that I filed, which was on June 26, 2025. And I just wanted to be clear that that motion was filed in the other matter only, not in this matter. I think I was commingling the cases because they were set together.

As I said before, I in no way was trying to infer that you had a motion that you had not ruled on. And just to clarify, it was in the other case, not this one.

HEARING OFFICER HALSTEAD: Okay. Thank you, Ms. Zastrow.

I see we have Ms.~Elmquist here. Is that correct, Ms.~Bradley?

MS. BRADLEY: Yes, it is.

HEARING OFFICER HALSTEAD: Thank you.

Ms. Elmquist, I'm Patricia Halstead. I'm the hearing officer in this matter. Can you please raise your right hand to be sworn?

(The oath was administered.)

HEARING OFFICER HALSTEAD: Can you please

state your name and spell your name for the record?
THE WITNESS: Stephanie Elmquist, E-L-M-Q-U-I-S-T.
HEARING OFFICER HALSTEAD: Thank you.
Ms.~Bradley, your witness.
MS. BRADLEY: Thank you.

DIRECT EXAMINATION

BY MS. BRADLEY:

Q. Ms.~Elmquist, are you licensed as a physician assistant in the state of Nevada?
A. Yes.
Q. For how long?
A. Since 2006.
Q. Are you licensed in any other states?
A. No.
Q. Do you have any other licenses?
A. My Nevada State Board of Pharmacy and the DEA license.
Q. Where did you go to physician assistant school?
A. Loma Linda University in California.
Q. Are you certified by the National Commission on Certification of Physician Assistants, which I think goes by an acronym of NCCPA?
A. Yes.

Q. How long have you been certified by that entity?
A. Since November of 2005.
Q. What is the process to renew your NCCPA certification?
A. One hundred CMEs every two years and taking our board exam every tenth year.
Q. When was your last recertification?
A. I'm currently enrolled in the recertification process right now; I'm in the eighth quarter of the online boards.
Q. Okay. And what does that mean? I'm sorry.
A. It's just the new certification that they're doing where you take a quiz quarterly. So there's 25 questions every three months, and then it's for 12 quarters unless you complete it at eight. And I'm at the last one right now, hopefully.
Q. Do you have any other certifications?
A. No. Just my -- oh, yeah. Sorry. Life support, advanced cardiac life support.
Q. What area of medicine do you practice in?
A. Emergency medicine.
Q. Have you practiced in other areas?

A. Family practice and urgent care. And then I did a short time in public health.
Q. And how long were you in family practice?
A. I was there for three years.
Q. And was that -- approximately when was that?
A. Oh, gosh. I would say prior to 2015. I'd have to look at my CV.
Q. Well, we can do that if you'd like. Let's go to Exhibit 9 if that helps you answer some of these questions. Have you seen Exhibit 9 before?
A. Have I what? I'm sorry.
Q. Have you seen Exhibit 9 before?
A. Yes.
Q. What is it?
A. My CV, curriculum vitae.
Q. And is this something that you prepared?
A. Yes.
Q. Does this appear to be a true and correct copy of a curriculum vitae that you prepared?
A. Correct.
Q. And this is something that you submitted to the Board?
A. Yes.
MS. BRADLEY: Based on Ms. Elmquist's

testimony, I'd ask that Exhibit 9 be admitted.

MS. ZASTROW: I believe it was already admitted, but no objection.

HEARING OFFICER HALSTEAD: It was already admitted, but let me double check my notes.

Yeah, it was admitted already.

MS. BRADLEY: Okay. I apologize.

BY MS. BRADLEY:

Q. So if we look at that document, does it help you remember when you provide --

A. Yes. It was Nevada health centers 2009 to 2013.

Q. Okay. And then I think also noted on there is urgent care. When was that time frame?

A. Correct. That was 2006 to 2012, and then it was taken over by the hospital, so I continued to work there until 2014 or '15. I worked there for quite a while.

Q. And then, currently, where do you work?

A. At Carson Tahoe emergency room.

Q. And how long have you worked there?

A. Since 2013. There was some overlap. I did some per diem for them before I was full time.

Q. I also see listed on here, "physician assistant, advisory committee member," can you tell

us about that?

A. Oh, yeah. So I was part of the PA advisory committee in 2012 to 2015.

Q. And is that something that the Board has?

A. Douglas Cooper had reached out to me to be a part of that. I don't know that they currently have that any longer. Is that correct?

Q. Yeah.

And -- but was that physician assistant advisory committee, that was something that the Board -- that was something that the Board had as a committee that you participated on?

A. Correct.

Q. And what were your duties when you were on the PA advisory committee?

A. We did revisions and addendums to laws governing PAs.

Q. Have you served as a peer reviewer for the Board before?

A. Yes.

Q. Oh, and actually -- I apologize, I probably need -- yeah.

How many cases have you reviewed for the Board?

A. Twelve.

Q. And that's including this case?
A. Correct.
Q. How long have you been on the Board's peer review list?
A. They initially contacted me in 2006, so since 2006.
Q. Are you familiar with investigation 23-22820, which is legal case number 24-42281-1, regarding David Kayle McCleve?
A. Yes.
Q. Have you seen the documents that have -- they've already been admitted, but Exhibits 1 through 8 in this case before?
A. Yes.
MS. ZASTROW: Your Honor, I would just interject an objection at this point in terms of what the witness is planning to testify to it. According to the list, it says she's going to testify as to the applicable standard of care, and there hasn't been a record made that she's qualified to do that. She is not a cosmetic PA. I've heard no experience with any cosmetic procedures, Botox or anything like that. She's an ER medicine PA.
No disrespect to Ms. Elmquist, who's very highly qualified, we know ER doctors are, but there

hasn't been a proffer to allow her to testify on the standard of care.

HEARING OFFICER HALSTEAD: I don't know that Ms.~Bradley has gotten there yet. But I'll take your objection as to weight.

BY MS. BRADLEY:

Q. Did you review Exhibits 1 through 8, Ms.~Elmquist, as part of your review of this case?

A. Yes.

Q. Did you review any medical records that Mr. McCleve prepared regarding his treatment of Patient A?

A. No. Because there was no medical records.

Q. Okay.

A. I mean, I reviewed his response to the Board.

Q. Yeah. No. Perfect. Thank you.

MS. BRADLEY: I mean, I -- normally we don't have to actually proffer our witnesses as an expert in the same standard of civil law. I mean, I do want to ask Ms.~Elmquist about her opinion regarding what she reviewed and her opinion on the standard of care.

I believe her experience, the time she's been licensed, she's testified she's worked in the

emergency department since 2013. Mr. McCleve is also an emergency room physician assistant, and, in fact, performed the care at issue in this case while on shift at the emergency department at the hospital.

So I feel like her knowledge of what should be occurring in the emergency department at a hospital is relevant, and that's what she's going to talk about.

HEARING OFFICER HALSTEAD: Go ahead, Ms Bradley.

MS. ZASTROW: Your Honor, just in response, I didn't suggest that this is some sort of Daubert standard. We have a standard which is a preponderance of the evidence and they've proffered this witness to opine on the standard of care and they've not laid a foundation that she's qualified to opine on the standard of care.

The allegation of malpractice doesn't relate to ER medicine; it relates to administering Botox, which is a different scope. And Mr. McCleve had a different supervisor for that scope. He had multiple supervisors.

So there hasn't been any proffer that Ms.~Elmquist is qualified to talk about what he did

or did not do and how that may or may not have fallen below the standard of care.

HEARING OFFICER HALSTEAD: Thank you, Ms. Zastrow. I already ruled that I would consider that objection as to weight to the extent I found irrelevant.

So, Ms.~Bradley, go ahead and proceed with your witness.

MS. BRADLEY: Thank you.

BY MS. BRADLEY:

Q. Do you believe that Mr. McCleve should have documented his medical treatment of Patient A?

A. Yes.

Q. Do you have an opinion regarding whether Mr. McCleve met the standard of care in his treatment of Patient A?

A. I don't feel that he met the standard of care.

Q. And why would you say that?

A. Because the standard of care requires us to treat our patients ethically, to treat them under a supervising provider who is in the same scope of practice as us, and to document our encounters with patients for both record and for continuity of care.

Q. Let's turn to Mr. McCleve's response to

the Board and Exhibit 2. Have you reviewed this document before?

A. Yes.

Q. Do you have opinion -- an opinion about the standard of care that was provided to Patient A after reading this document?

A. Well, from what I gathered, this was written several months after the patient was treated in the emergency department, and it's not a legal medical document; it's just his response to the Board.

Q. Okay. So what is your opinion regarding Mr. McCleve's documentation of his care of Patient A in this case?

A. There was no medical documentation.

Q. How did you learn the standard of care for documentation in a patient medical record?

A. Well, we learned that in PA school. And then there's mandates by the state and by the -- like, nationally there's some standards for documentation as well. And then the Board states that documentation needs to be timely, accurate.

Q. And if you are administering medication to a patient, what would you include in the medical record for that medication administration?

A. Well, medication administration typically requires us to name the medication, the amount of medication, the lot number, the expiration dates, and the site of administration.

Q. Okay. And when you say "site of administration," what do you mean by that?

A. Well, with other injections that I give in the emergency department, it would be, like, was it administered in their deltoid or, you know, was lidocaine injected into their hand or to their face.

Q. Why should those things be included in a medical record?

A. If somebody has an adverse reaction, you have a lot number and a name of the medication with an expiration date to contact the supplier and make sure that, you know, nobody else is having similar reactions. But it's for continuity of care.

Q. And what do you mean by "continuity of care"?

A. If something goes wrong, there's documentation to look back at so that the next person can move forward with treating the patient.

Q. What is the statute -- I think you said it says -- oh, actually I'm going to ask.

Why are timely, legible, accurate, and

complete patient medical records important?

A. For the same reason I just mentioned, just so that, you know, you can document what occurred with the patient, what medications are given to the patient so that whoever's seeing the patient next has records to review so that they can continue good care for the patient.

Q. If we look at Exhibit 2 as a medical record for this patient, because it does contain some details regarding the care that was provided, could other health care providers review that record?

A. I don't -- I mean, there's a lot of holes in it. There's some medical information in his documentation regarding some brief past medical history and some substance use, but it doesn't name the medication, the site, the amount.

Q. Okay. And would that have been available to them to review?

A. No.

Q. Why do you say that?

A. Because this was written three months after the patient was taken care of.

Q. And who was it addressed to?

A. The Board.

Q. So would it have been a medical record file for the patient?
A. No.
Q. What does the statute mean by "timely" with regard to records?
A. I don't know if there's an exact definition of timely, but typically, like with our hospital, it's about 48 to 72 hours to get a record complete and signed off. And definitely if it's not done within a month, they can revoke your hospital privileges.
Q. Does the information provided by Mr. McCleve in Exhibit 2 to meet the standard for medical records under Nevada law?
A. No.
Q. And I think you already kind of explained, but why would you say that, what's lacking?
A. Because it's not in a patient's chart. It's not a medical document. It was an email to the Board.
Q. As an emergency room physician assistant, do you perform cosmetic procedures on patients?
A. No.
Q. Why?
A. Because at the emergency department, I am

only allowed to do what my supervising providers are scoped of practice to do.

Q. And do you have an opinion regarding Mr. McCleve inviting a patient to the hospital to receive injections in this manner in this case?

A. Well, I mean, it's definitely against hospital policy, and, you know, our supervising providers at the ER wouldn't allow that either. So I feel like it was wrong on both ends, both with the ER physician's group and the hospital credentialing.

Q. Okay. And what about malpractice coverage? Do you have malpractice coverage as a physician's assistant?

A. Yes.

MS. ZASTROW: Objection to relevance.

MS. BRADLEY: I'm asking her -- well, I was going to ask her about insurance coverage regarding the activity she performs in a hospital. I think that's relevant because Mr. McCleve also performs activities in the hospital.

HEARING OFFICER HALSTEAD: How does that relate to the charges?

MS. BRADLEY: Well, I'm asking her her opinion on whether it was appropriate to invite a patient to the hospital to receive injections, and,

I guess, I think whether or not there's malpractice coverage on activities that physician assistants are providing at a location, I think it's relevant to whether it's malpractice or not.

I guess what I'm trying to say is providing services outside the scope of your coverage and your authorization, I think, is relevant. That's why we're alleging it's malpractice, in part.

MS. ZASTROW: Your Honor, this is the first time hearing that the lack of medical coverage -- number one, that's factually inaccurate, Mr. McCleve was insured. There was medical coverage. There was no civil lawsuit filed. She's speculating about insurance coverage.

None of that's in the Complaint, and it's not relevant to the standard of care.

HEARING OFFICER HALSTEAD: My concern is the allegations are that he did it during his emergency shift, did not conduct a medical examination or history, and failed to create any medical documentation relating to his treatment. I don't see that tying into any of those allegations.

Ms.~Bradley, do you want to respond to that?

MS. BRADLEY: Well, in her response earlier, Ms.~Elmquist said something about credentialing at the hospital and, I guess, that's also tied into the malpractice, and, I guess, I was planning to kind of follow up on that statement that she made. I don't know how necessary that is.

I would withdraw the question.

BY MS. BRADLEY:

Q. Ms.~Elmquist, do you have a supervision agreement on file with the Board for your provision of services as a physician assistant?

A. Yes.

Q. And can you tell us about the process of completing that, that supervision agreement?

A. You print off a form from the Board and sign it, and then your supervising provider also signs it. It's done under a notary. And then it's faxed or emailed back to the Board. And then when they received it, you have confirmation with an email.

Q. Okay. And do you recall things that may be contained in the agreement?

A. Like, where you practice is on there, then the first and last name of your supervising physician, then my first and last name, and the

address that I'd be practicing at.

Q. So when you say the address you'd be practicing at, I guess, what do you mean by that?

A. I just listed the hospital where I would be working.

Q. So would that supervising agreement allow you to practice at other locations outside of that location?

A. I don't think in my case because we're just one group at one ER. But I have, in the past, worked for an urgent care where I was at three different facilities but all under the urgent care umbrella with the same supervising provider.

Q. Okay. And have you ever had more than one supervision agreement on file with the Board at a time?

A. Yes.

Q. And can you tell us about that and what the reasons for that were?

A. Well, when I overlapped with the hospital and the urgent care, that's an example I had to have an urgent care supervising physician and then my ER supervising physician.

Q. As an emergency room physician assistant, what are -- what is your scope of practice?

A. My scope of practice is to treat patients in a manner that is approved by my supervising provider and under their scope of practice.

Q. And where do you provide that treatment?

A. In the emergency department.

Q. Do you know what your supervisor's education and training is?

A. They're board-certified emergency room physicians.

Q. What services are you authorized to perform?

A. Well, history, physical, medication administration, procedures, lacerations, abscess drainage, assisting with chest tubes, central lines, lumbar punctures.

Q. Have the duties that you're authorized to perform changed over the years?

A. Yes.

Q. And how did that happen?

A. Well, if we're interested in doing procedures, we get further education regarding them. And then when our provider feels that we're proficient after supervising us doing those things, they will sign off on it, and then the hospital will add it to our credentialing.

Q. How does your supervisor evaluate what services you're competent to perform?
A. Direct supervision.
Q. And do you have monthly visits with your supervisor?
A. Yeah. She'll ask us every month in an email if we can meet her for coffee, and then she'll ask us about education topics. And then we meet once a month, usually once a month, sometimes we miss, but, yeah, we do have monthly meetings for education.
Q. And does she review files of patient files of patients that you provide care for?
A. Yes.
Q. And how does that happen?
A. She can randomly select them, but I can also send -- I send, like, two or three every day to her for sign off.
Q. And would she be able to review the care that you provided that was provided outside of the hospital system, if you did provide care in that manner?
A. No.
Q. Are there hospital policies that also affect the services that you're able to provide?

A. Yes.

Q. And what are those, if you know?

MS. ZASTROW: Your Honor, I'm just going to interject an objection. Again, this is way outside the scope. I don't understand the relevance of any of this. She's already testified that she thinks he fell below the standard of care. We're going way off what her designated --

HEARING OFFICER HALSTEAD: Ms.~Bradley?

MS. BRADLEY: I'm asking Ms.~Elmquist about her experience and her understanding of her scope because I think that helps us understand her opinion of why she thinks that Mr. McCleve should or should not have performed the things he did in this case.

And so, given that they're both emergency room physician assistants, supervised by board-certified emergency room physician assistants while they're located at the hospital, I think it's relevant to to ask her what she's able to do, how she knows about that, and, essentially, the services she's competent to provide and authorized to provide.

MS. ZASTROW: Your Honor, I would just respond that it would be relevant if there was a

malpractice allegation against Mr. McCleve for treatment -- emergency medicine treatment, and there's not.

HEARING OFFICER HALSTEAD: Well, the allegation is that he injected Patient A sometime during his emergency department shift. And so to the extent that's cleated and Ms. Bradley's proffer is relevant, the objection's overruled.

MS. BRADLEY: I think that means Ms.~Elmquist can answer the question, but I apologize, I don't remember exactly what the question was.

HEARING OFFICER HALSTEAD: Why don't you just back up to where you need to be?

BY MS. BRADLEY:

Q. I think what I have said, and I'm sorry, I -- I said, Are there hospital policies that also affect the services you're able to provide? I think that's what I'd asked.

A. Yeah. And that that's with the hospital credentialing. So we, every two years, have to get peer review. And then we have to review, like, the procedures that the hospital allows us to do and initial that we're still competent in those things. And then have anonymous peer reviews to say that

we're treating patients appropriately, acting appropriately in the workplace.

Q. As far as you know, do other hospitals have a credentialing system?

A. As far as I know, they do.

Q. As a physician assistant supervised by an emergency medicine physician, is it fair to say that your scope of practice now is the same as Mr. McCleve's would have been on April 8, 2023, when the incident at issue in this case occurred?

A. Yes.

Q. Would you provide Botox injections to a patient at your hospital while on shift at the ER?

A. No.

Q. And why not?

A. Because it's not a scope of practice for an emergency room physician, so I wouldn't do it either.

Q. Do you have a duty as a professional and a physician assistant to know what your scope of practice is?

A. Yes.

Q. How do you determine what it is?

A. How do I determine what my scope of practice is?

Q. Yes.
A. Well, I mean, we're obviously board-certified in a primary care program, and then each entity that we work in, we're given further education by our supervising provider, which determines our scope of practice.
Q. Let's look at the allegations in the Complaint that the Board filed. So that's -- it's actually not an exhibit. I apologize.
It's in the formal Complaint. I think you have that in front of you?
A. Yes.
Q. Okay. I'm looking at page 2 of the formal Complaint. It says "Count 1, malpractice." Have you reviewed the Complaint before?
A. I have. I'm looking -- when I'm looking at page 2, it's the letter from Don Andreas. Is that what you're referring to?
Q. No. I'm sorry. I'm referring to the filed formal Complaint in this case. I thought that you'd had it. If not, I can just ask you about it.
A. Okay.
Q. Is it your opinion that Mr. McCleve's care of Patient A in this case -- that in the care, he failed to use the reasonable care, skill, or

knowledge ordinarily used under similar circumstances when he injected Patient A with botulinum toxin sometime during his emergency department shift at North Vista Hospital?

A. Yes. Because there's just no documentation, which is standard, so there's no way to tell how he treated the patient because nothing is written.

Q. So it sounds like, in your opinion, part of your concern regarding malpractice has to do with the absence of a medical record?

A. Correct.

Q. Are there other concerns that you have regarding that injection of the patient at the hospital?

A. Well, I mean, I don't know how the medication was stored, because a lot of medications are temperature sensitive, a lot of medications have to be reconstituted. There's just not a lot of information regarding what happened with the medicine, where it came from, or what it even actually was that was given.

Q. Further, is it your opinion that it's malpractice or it's failure to use reasonable care, skill, or knowledge ordinarily used under similar

circumstances if Mr. McCleve did not conduct a medical examination or a history of Patient A?

A. Yes.

Q. Why would you say that?

A. Because the standard of care is to perform a history and physical on every patient that we treat.

Q. If we looked at the next allegation in the Complaint -- and I'm sorry, I know you don't have that -- we've alleged that Mr. McCleve failed to maintain complete medical records as required by the law. I think you already said that's timely, legible, accurate, and complete.

Do you think Mr. McCleve -- is your opinion that he failed to maintain complete records regarding Patient A in this case?

A. Yes.

Q. And why do you say that?

A. Because there's no records.

Q. And with regard to Count III in the Complaint, it basically says "violation of standard of practice," and it's referring to a regulation which talks about supervision.

MS. ZASTROW: Your Honor, I would just interject another objection, and I should have a

minute ago too. This witness was not designated to testify beyond the standard of care. Now she's talking about statutory violations for recordkeeping and supervision, and I'm presuming she's going to be asked about the fourth count.

This just goes back to us not knowing what she was going to say.

MS. BRADLEY: My response would be that we've alleged malpractice, and we believe Counts II, III, and IV are components of that malpractice.

You know, again, she's saying there's not been a record she saw, we don't have a record regarding the care of Patient A, and so the standard of care includes these things. I mean, that's why it's reasonable care, skill, and knowledge. Often statutes and regulations provide -- set forth duties that licensees have to follow, and failing to follow those, especially if it's egregious enough, can constitute malpractice.

And so, I guess, I'm still just asking her opinion on whether or not she believes these things occurred or not.

HEARING OFFICER HALSTEAD: I'm looking at your disclosure again because I believe that was the basis of Ms.~Zastrow's objection. I'm just going to

print it so I have it going forward.

MS. ZASTROW: Yes, Your Honor. And what Board counsel just said is that malpractice is subsumed in the other three counts. That's also -- that sounds like they're making duplicative charges against Mr. McCleve. A recordkeeping violation, there's a statute specific specifically on point. You don't need a standard of care witness. There are either medical records or there are not. The same thing with the supervising physician, there either is one or there is not.

Ms.~Elmquist's opinion is not -- well, you're the decision-maker, Your Honor, I understand that. In my opinion, it should not be probative on those issues.

HEARING OFFICER HALSTEAD: So the disclosure says:

"Ms. Elmquist is a physician assistant and is licensed to practice medicine in the state of Nevada. Ms. Elmquist has conducted a medical review of this case and is expected to testify regarding her medical review and the applicable standard of care."

And so the applicable standard of care, we have touched upon, and now my understanding is that

Ms.~Bradley is going through the counts with regard to that standard of care. Whether or not those counts support a malpractice claim versus just what's stated in those accounts is a question for me, but I would preface that the malpractice claim is based on the malpractice count.

But to the extent that she's asking her about review of the records as it applies to the counts as pleaded, then that's what I will be focusing on.

Go ahead, Ms.~Bradley.

BY MS. BRADLEY:

Q. Based on your review of this case, Ms.~Elmquist, do you believe Mr. McCleve had appropriate supervision when he provided the medical services at North Vista Hospital on April 8, 2023?

MS. ZASTROW: Objection, Your Honor. Purely speculation. There's nothing in the record. She's pointed to no evidence about that at all. It's purely speculation.

MS. BRADLEY: I would respond that she's reviewed the record, she's talked about the record she reviewed, she's talked about the scope of practice for emergency room physician. I mean, I think she can opine based on our review whether or

not she thinks there was supervision for the physician assistant to perform this service at the hospital on April 8, 2023.

MS. ZASTROW: Your Honor, the prior witness already testified that he had a supervisory document on file. It's -- their prior witness already established that.

If they want to seek to introduce contradictory testimony, I suppose that's their right, but she would be purely speculating. There's documentary evidence on this issue; it does not take an opinion.

HEARING OFFICER HALSTEAD: So the scope of Ms.~Bradley's questioning, if I understand it right, is supervisory, supervisory actions as it applies to this particular procedure being done in emergency room.

Again that's subsumed in Count I, and so the objection is overruled.

MS. BRADLEY: Okay. So I think she can answer it.

THE WITNESS: So it looks like he did have an emergency room supervising provider. But as far as the physician that was supposed to be overseeing Botox, it said in the record that the doctor had not

realized that he was still covering supervision for the physician assistant. And obviously there wasn't much communication, possibly, between them because he wasn't aware that he was supervising him still for cosmetic procedures, from what I read.

BY MS. BRADLEY:

Q. And then the last count -- we've talked about your experience and training in the emergency room -- do you have an opinion as to whether or not Mr. McCleve's provision of Botox services within the emergency department on April 8, 2023, goes beyond the scope of his license?

A. It goes beyond the scope of the emergency room, for sure.

MS. BRADLEY: Okay. Thank you. I have no further questions for Ms. Elmquist at this time, but I would reserve the right to redirect as well as call her in rebuttal, should I need to.

HEARING OFFICER HALSTEAD: Ms. Zastrow, your witness.

MS. ZASTROW: Thank you, Your Honor.

CROSS-EXAMINATION

BY MS. ZASTROW:

Q. Ms.~Elmquist, I want to start right where you left off. You just said it was your opinion

that he worked beyond the scope of the ER. Do you mean the policies and procedures of the ER, the protocol?

A. The policies, procedures of the ER and then the scope within our supervising providers there.

Q. You're talking about the ER?

A. Correct, the emergency room.

Q. And have you ever worked in cosmetic medicine before?

A. No.

Q. Is it possible, in your opinion, to breach protocol at a hospital and lose your privileges without committing medical malpractice?

A. Is it possible to breach protocol -- say it one more time.

Q. Is it possible for a PA or an MD to breach a hospital protocol and lose their privileges without committing medical malpractice?

A. I guess I could say that's possible.

Q. Ms. Elmquist, I appreciate your patience and sorry for any long pauses. We have not been provided your testimony prior to, so I'm taking notes.

Can you do whatever your supervising MD

lets you do?

A. Well, as long as we can proficiently demonstrate that we can do it with them and they are -- as long as they are certified to do it as well -- or board-certified to do it as well.

Q. So is your answer yes, you can do whatever your MD wants you to do or let you do. Right?

A. Generally. I mean, I think there would be a limit to that because if he asked me to do something I wasn't comfortable doing, I wouldn't do it.

Q. Well, that question really goes more to you and what you would choose to do. But under the law, you're allowed to do anything that your supervising MD allows you to do. Correct?

A. I don't think that's true. I wouldn't go into surgery and just perform an operation without a supervising provider if he told me to do it.

Q. That wasn't my question. Please listen to my question.

A. Okay.

Q. You're a physician's assistant; correct?

A. Correct.

Q. Are you allowed to do the work for patients that your supervising MD allows you to do?

A. Correct.
Q. You can do anything he allows you to do. I'm not asking whether or not you're going to necessarily agree to do it, but you can do anything your supervising physician allows you to do. Correct?
A. Correct.
Q. In the ER, you do a lot of things that are very stressful, I would presume. Right?
A. Yes.
Q. Intubate patients?
A. I assist with that. I never do it alone, but yes.
Q. You've assisted with intubating patients?
A. Correct.
Q. Very traumatic, very stressful?
A. Yes.
Q. Ever insert a chest tube, chest line?
A. I have done chest tube with doctors, yes.
Q. And your docs allow you to do that. Right?
A. Yes.
Q. What if you had a supervising doctor that -- could you do a craniotomy?
A. I would have to have a lot of training to

do that.

Q. Your training; correct?

A. My training.

Q. You're allowed to do what you're training prepares you to do. Correct?

A. Correct.

Q. In addition to that, you're allowed to do what your supervising physician allows you to do. Correct?

A. Yes. As long as it's in their scope of practice as well.

Q. And whose responsibility is it to report their scope of practice? It's the MD's; correct?

A. Correct.

Q. Did I hear you say you have worked as a peer reviewer for 12 cases?

A. Correct.

Q. How are you paid?

A. They pay hourly for the review.

Q. What did you review in this case?

A. All of the documentation provided.

Q. And what documentation was provided to you to review?

A. The case number 2442281-1 -- 1-1.

Q. What information did you review?

A. I reviewed the initial letter from the senior investigator, the response of Mr. McCleve to the Board, the response from Dr.~Sheep to the Board, and Dr. Harris' response to the Board. There's a document regarding all of his supervising providers and the time that they were associated and discontinued.

Q. Let's look at that for a minute. Can you stay on that page?

A. That page 14?

Q. Sure. It's exhibit number -- my pages are not numbered. It's Exhibit 7. Yes, it's 14.

Earlier that you felt that Mr. McCleve didn't have supervision to -- for an injection, for the Botox injection that's an issue here. Did you testify to that?

A. Correct.

Q. Do you see that list there? Do you see the very first doctor on there, Dr.~Sheep?

A. Yes. That's -- when I made my previous statement, I said that Dr.~Sheep was not aware that he was still supervising.

Q. What -- what -- why would you say that? Where do you get that information? Look at this documentation. It says that he was his supervisor

for March 16, 2021, to June 27, 2023. Do you see that?

A. I do.

Q. And when -- when did this incident occur?

A. I'd have to look at the exact date. It was April of 2021.

Q. And Dr. Sheep?

A. And then I reviewed Dr.~Sheep's response to the Board that said he wasn't aware that he was supervising, so that just led me to believe that they didn't communicate.

Q. Okay. So you took Dr.~Sheep's word in a letter. Did you call him out, did you interview him?

A. No. I only reviewed the documentation I was given.

Q. Did you review the supervising agreement that's on file with the Board?

A. Just the -- just that exhibit on page 14.

Q. You said you reviewed Mr. McCleve's response. I heard you say that; right?

A. Correct.

Q. Did you see that he had been in contact with Dr.~Sheep, and that they were planning on going into business together? Did you see that?

A. Yes. I also saw that he said there had been no formal agreement.
Q. No formal business agreement. Right?
A. Correct.
Q. There was a supervising agreement, and Dr.~Sheep was his supervisor?
A. Okay. I mean, it is listed on there that the dates are until 2023.
Q. You're choosing to take Dr.~Sheep's letter in which he was being accused by the Board of doing something wrong. Do you know if anybody else from the Board ever followed up with Dr.~Sheep?
A. I only read the documentation I was given.
Q. You don't do any interviews. Right?
A. No.
Q. Are you allowed to?
A. I don't think so. A peer review is just to review the documentation given. That's all I do.
Q. Okay. I've heard you say a number of things about Mr. McCleve that I'm wondering if you're aware are incorrect. For example, did you know that he had worked in cosmetics for many, many, many, many, many years?
A. I did not.
Q. You were making assumptions that he had no

training, qualifications, weren't you?
A. Wasn't making a assumption, no. I was making --
Q. You said he didn't have the training and qualifications. That's what you said?
A. No. I said that he was outside of the scope of practice for an emergency room provider, that we wouldn't do that there.
There's many PAs that do Botox, they just work in dermatology offices or plastic surgeon offices. So that's not out of the scope of his practice; it's just not under an ER supervising provider.
Q. You don't know that to be true. What you know to be true is that he violated the rules of Vista. Correct?
A. Correct.
Q. He lost his hospital privileges. Correct?
A. Correct.
Q. But you don't know that he performed this Botox injection below the standard of care?
A. Because there's no medical documentation. There was no records to review.
Q. You're making that assumption as well?
A. He didn't provide any to the Board.

Q. You're making a lot of assumptions.
A. Well, I would think if there was medical records, he would have provided them to the Board.
Q. Did you read his response?
A. I did.
Q. Did you read where he said he conducted a full medical history?
A. But there's no documentation of it.
Q. Did you read --
A. The medical records, it doesn't exist unless it's written down.
Q. We can't talk over each other because of the court reporter.
A. I understand.
Q. And I don't mean to be rude at all.
There's a count in the Complaint that Mr. McCleve failed to adequately keep medical records. Okay?
A. Right.
Q. There's a cause of action for that. There's an NRS for that. Right?
A. Correct.
Q. If you fail to keep records, it's black and white. You don't need an expert to talk about that. Right?

A. Correct.
Q. When you don't have the records, you don't have records. Right?
A. Correct.
Q. When you look at the standard of care, you look at the treatment that's rendered. Correct?
A. Correct. Which typically comes from the records. The records paint the picture of what we're doing.
Q. You're choosing not to read what Mr. McCleve said in his letter to the Board.
A. No. I read what was wrote to the Board.
Q. Okay. You read that he performed a full medical history?
A. I did. But there's no documentation of it.
Q. I believe you're conflating a lack of medical records with the standard of care. You're choosing to ignore him in his testimony. Correct?
A. No. I'm just saying that I can't say if he fell below the standard care because there's no documentation of where he injected medications, what medication he injected. There's no record of that, which falls below the standard for any of us. We have to say what we're doing. It paints the

picture.

Q. Right. Which is in NRS, which is if you fail to keep medical records, you can be subjected to discipline for that. Correct?

A. Correct.

Q. The standard of care is with respect to the treatment that's rendered?

A. Correct.

Q. You don't know about the treatment that he rendered, or you're choosing to ignore what he said in his letter. You read his letter, right, you read it?

A. Yes. I have it right in front of me.

Q. Okay. Did you know that the Board sent Mr. McCleve the inquiry about this case one month after filing other charges against him, a case in which you're involved?

A. I did not know that, a month later, no.

Q. One month. One month later, the Board sent this. He responded, didn't he?

A. He did.

Q. He poured out his heart and was truthful in this letter, didn't he?

A. He did, yes.

Q. He admitted that there were no written

records, didn't he?
A. He did.
Q. But he told you exactly what he did, didn't he?
A. Yes.
Q. And what did he say?
A. He said that he felt pressured to do a procedure when he wasn't at the right clinic because he was called to do so by a potential new client.
Q. He said he went to the clinic to perform the procedure. Correct?
A. Correct.
Q. He said he took a full medical history. Correct?
A. Not at the clinic, no.
Q. He said he did a full medical screening. Did you --
A. He said that, but I --
Q. -- know that?
A. He said it, but I don't see it.
Q. It's in his letter. Look at page 2, Exhibit 2.
A. No. I read what he said he did, I just don't see a medical documentation of it. He did not provide medical records.

Q. I understand that you want to ignore his letter to the Board and his testimony, but you're conflating a lack of medical records with the standard of care on treatment.

A. Because what I was taught in school is that if I don't write it down, it doesn't happen. So people have to look at our medical records because they paint a picture of what we're doing for our patients.

Q. So is it your testimony -- is it your testimony that the single act of malpractice is failing to keep the records? Is that your testimony?

A. Say that again.

Q. Is it your testimony that the singular act of malpractice is failing to keep the medical records?

A. No. But it definitely falls below the standard of care. I mean, I don't know if that's malpractice. That's not how it's defined.

But what I'm saying is that it's hard to determine if malpractice is being committed when there's no picture of what's happening with the patient.

Q. Malpractice is the word --

A. That's what I'm trying to say.
Q. Malpractice is the word used in the statute. NRS 633.014, that's the statute. That's malpractice. Okay?
Is it your testimony that because there was no written medical record produced to the Board that that single act alone constitutes malpractice?
A. I would think you could say that, yes.
Q. Okay. So there's no other -- there are no other elements to the malpractice?
A. No. There's a lot of elements to malpractice, but that would be one of them if we're not keeping records of doing a procedure on a patient.
Q. To this case, this case, because you didn't look at the treatment, right, because you say you didn't have the records? So you're not going to take Mr. McCleve's word. Right? You're ignoring him. Correct?
A. I am not ignoring him. The Board presents the medical --
Q. You are.
A. Okay.
Q. You're ignoring him.
A. I'm not ignoring him.

Q. You said if it's not in the --
A. It didn't happen.
Q. -- record --
A. Correct.
Q. -- you learned in medical school --
A. If it's not in the record, it didn't happen.
HEARING OFFICER HALSTEAD: Okay. Stop. You guys are talking over each other. I need a question, I need an answer, I need you to let each other finish.
THE WITNESS: I'm sorry.
BY MS. ZASTROW:
Q. Ms.~Elmquist, let me finish my question.
A. Okay.
Q. You testified that in medical school -- PA school, you learn if it's not in the record, it didn't happen. Correct?
A. Correct.
Q. So you're ignoring what Mr. McCleve said, and that's fine, that's your testimony. Right?
A. Correct.
Q. So your testimony is that, because there's no medical record, that's the single act of malpractice. Correct?

A. Correct.
Q. Because you are not looking at what he did or did not do because there's no record of it in your opinion. Correct?
A. Correct. From what I was provided.
Q. So you cannot say that the treatment that he rendered did or did not fall below the standard of care. Correct?
A. Oh, we can say it fell below the standard of care because --
Q. No.
A. Yes. Because the standard of care is keeping records of our patients.
Q. No. You're saying the same thing in a circular way.
A. I feel like you're asking me the same thing again.
Q. You have not identified a single act by Mr. McCleve that fell below the standard of care, other than he didn't give the Board the medical records. That's the only thing you're saying. Right?
A. Correct. He did not document what he was doing with the patient --
Q. You don't know that.

A. -- what medicine he was using.
Q. You don't know that.
A. Okay. You're correct. I'm going off of what I was given.
Q. Right. Exactly. You were going off of what the Board gave you. Right?
A. That's what we're supposed to do.
Q. That's what the Board hires you and pays you to do. Correct?
A. Yes. They outreach to us; we do not outreach to them.
Q. You're not the investigator; correct?
A. Correct.
Q. You don't ask for more information; somebody else does. Right?
A. Correct.
Q. They spoon feed you the information to look at, and you provide an opinion. Correct?
A. I provide an opinion based on the information given, correct.
Q. Correct. In this case, part of that information was a letter by Mr. McCleve. Correct?
A. Correct.
Q. But you're disregarding that letter. Correct?

A. Correct.
Q. You didn't disregard the letter from Dr.~Sheep. Why is that?
A. No, I did when you explained to me that he was still on file. I'm just saying it's part of our responsibility as a PA as well to maintain communication with our supervising providers. I mean, we have to be in clinic with them a certain amount of times, we have to be meeting with them, they have to be directly seeing us.
So when Dr.~Sheep's letter said that he hadn't realized he was a supervising provider, I'm just going off of the information I have received and reviewed.
Q. Right. Well, if you had compared his letter to Mr. McCleve's letter, you would see that they're not telling the same story. Right?
A. Well, from what I gathered from Mr. McCleve's letter, he was not actively in a business with Dr.~Sheep.
Q. That's not what it says. That's not what it says. And he -- and he's going to testify. Okay?
But you're picking and choosing what evidence you're going to rely on. And you're going

to take Dr.~Sheep's letter and rely on that and not rely on the records that are with the Board, which include a supervisory agreement.

Did you pull that agreement?

A. No. I have the documentation from the Board that says the dates of the supervising agreements.

Q. So he was supervised by Dr.~Sheep. Correct?

A. Yes.

Q. He also had an ER doctor supervisor. Correct?

A. Correct. I saw that as well.

Q. Do some PAs have side gigs?

A. Yes. But we have different supervising providers for that, for sure.

Q. Is it possible that Mr. McCleve had a side gig, just as you are talking about, where he had a different supervisor, this case being Dr.~Sheep?

A. Yes, but that -- it's just not --

Q. It is possible that Mr. McCleve's side gig was cosmetic?

A. It is. But you wouldn't perform cosmetics at the ER if that's your side gig.

Q. I'm not -- I'm not suggesting that he

should have done that. He said in his own words it was a mistake. He said that. Right?

A. Yes.

Q. He feels terrible about that. He made a bad decision. Right?

A. Correct.

Q. He violated hospital policy and he lost his privileges. Right?

A. Correct.

Q. But that doesn't equate to falling below the standard of care. You just testified to that 15 minutes ago. Correct?

A. But I do feel it falls below the standard of care because there's not --

Q. That's not what you said.

A. -- documents. Yes, I said there is no documents provided to me, and that's falling below the standard of care.

MS. BRADLEY: I'm going to object if we keep talking about what our testimony was regarding hospital privileges and whether it's malpractice -- virtual connectivity issue.

HEARING OFFICER HALSTEAD: So we dropped off the recorder, and I stopped speaking when we dropped off. We're back on recording.

My point was going to be that if the witness feels that her testimony was misstated, it would be incumbent upon her to correct that.

That said, there's still a lot of cutting each other off and talking over each other, and so it's making it difficult to ferret that out.

So I just ask you again, I know you get in a groove, and I know that cross-examination is an art form and part of it is keeping a rhythm, but, please, be careful of that so that we can have a good record.

MS. ZASTROW: Thank you, Your Honor. And it doesn't help that the sun is beating down on me in my office.

BY MS. ZASTROW:

Q. And, Ms. Elmquist, I certainly apologize. I don't mean to talk over you. We need a clear record. In fact, to the contrary, I'm trying to keep a clear record and keep us on track and keep clear testimony, and I'm trying to understand the nature of your opinions.

So earlier, what I understood you to say -- and you please correct me if I'm wrong -- is that it's possible for a physician's assistant to violate hospital protocol or policy and lose their

privileges. But that doesn't necessarily mean that's an act of malpractice or falling below the standard of care. Didn't you say that?

A. I said that it would not constitute -- it doesn't always have to constitute malpractice, correct, because somebody could come to work with substance abuse or something like that and never see a patient but lose their hospital privileges.

Q. If Vista Hospital terminated Mr. McCleve's privileges -- and they did for violating company policy -- don't you think they would have done an investigation?

A. Yes.

Q. Don't you think they would have told the Board if they felt Mr. McCleve fell below the standard of care?

A. Yes.

Q. They didn't do that, did they?

A. From the information I was provided, I didn't see that.

Q. He was -- his privileges were terminated because he made a bad decision, which he admitted to, which is injecting Botox into a patient. Right?

A. Correct. On hospital grounds.

Q. A violation of hospital policy. Correct?

A. Correct.
Q. When Dr.~Sheep responded, his letter, did you know that he was currently under investigation with the Board or that he had been under investigation with the Board?
A. I wouldn't know that information.
Q. Okay. You don't know the motive behind what he wrote. Right?
A. I wouldn't think there would be motive when you're responding to the Board. I just feel like we should all be truthful. It's becoming --
Q. You feel that way, but yet you don't expect -- you don't accept Mr. McCleve's response to the Board?
A. I accepted his response to the Board, but I don't see it as a medical record.
Q. Nobody asked you to see it as a medical record. He recited the facts. He admitted that there wasn't a medical record.
But you're disregarding what he said occurred with the patient. Correct?
A. Correct. Because it is not a medical record, so I can't -- and there's no -- even so, his documentation still, even though he did put some information regarding the patient in there, does not

say any details about the medication, the site of injection, the amount used, how it was stored, how is it reconstituted. There's a lot of lack of information.

Q. Which is a violation of the NRS on recordkeeping. Correct?

A. Correct.

Q. In the process of administering the Botox, are you -- do you have any understanding that Mr. McCleve fell below the standard of care?

A. I couldn't comment because there's no documentation of it.

Q. Right. But you do have his -- you do have his explanation, but you're just -- you're just choosing not to accept it. Correct?

A. I'm saying that it's not even in his letter how he administered that medication.

Q. You read the letter. Right?

A. Correct.

Q. You've never administered Botox injections. Right?

A. No.

Q. You find it to be -- do you think it's more complex than intubating patients?

A. No.

Q. Do you think it's more complex than placing a chest tube?
A. No.
Q. Do you think it's more complex than emergency medicine?
A. No.
Q. You ever heard of Botox parties?
A. I have. But I don't know that they're legal.
Q. People do Botox injections in their homes all over Nevada. Did you know that?
A. I do. But I'm not certain of the legality of that.
Q. Well, the legality would be if they were a licensed MD or a licensed PA. Right? There's no -- are you aware of any regulation that would require a specific setting other than a sanitary setting?
A. Well, I am just speaking to the case presented, that I would not inject Botox in the ER where I'm not certified to do that.
Q. But it has nothing to do with the cleanliness of the ER. Right?
A. No.
Q. Has nothing to do with the lack of emergency, you know, resources. Right?

A. Right.
Q. What better place to do a Botox injection than in an ER?
A. No. It's a terrible place to do it. It's not -- not a place to do it.
Q. He didn't do it in the parking lot. Right?
A. I don't know. I have no idea.
Q. All right. He didn't do it in somebody's home?
A. I have no idea.
Q. Okay. You read the medical records from Vista Hospital?
A. Correct.
Q. Earlier said -- you said there's no record of what happened. Right?
A. No record of what happened between the PA and the injections.
Q. Well, but there is, right, in the Vista medical records?
A. No. It still doesn't state where it was given or how much was given or the exact type of medication with the lot number.
Q. I'm going to ask you to look at Exhibit 8.
A. Is that -- I have -- okay. Yes,

Exhibit 8, Patient A, medical record from the ER.

Q. Let's look at the very first page. See that?

A. Yes.

Q. See under "Chief Complaint" --

HEARING OFFICER HALSTEAD: I'm sorry. Just so everyone's aware, we're referring to the patient as -- I believe it's "Patient A." The name is not supposed to be on the record, so I want to remind everyone not to --

THE WITNESS: Oh, sorry.

HEARING OFFICER HALSTEAD: -- say the name. And I know that the court reporter will not place it in the record and will instead replace it with "Patient A."

So, Ms.~Elmquist, just going forward, so you're aware of that.

THE WITNESS: Thank you. Sorry.

HEARING OFFICER HALSTEAD: That's okay. Thank you.

BY MS. ZASTROW:

Q. Do you see under "Chief Complaint"?

A. Yes.

Q. You see that sentence right there? It says "It was reported the patient received 50 units

of --

A. But --

Q. You see that?

A. But it doesn't specify where. There's a lot of areas of the face that you can inject. And some of them are more dangerous than others.

Q. It says "to the face." Right?

A. Which is not detailed. Correct.

Q. Is this a medical record?

A. It is.

Q. Do you know how the ER doctor knew this?

A. Yes. Because the PA told him.

Q. Mr. McCleve told him. Correct?

A. Correct.

Q. He told him everything. Did you know that?

A. Correct.

Q. Told him everything about the treatment. Right?

A. But there's still no documentation --

Q. This is --

A. -- even the ER physician -- sorry.

Even the ER physician that was taking over care of the patient had no idea where -- what the actual medicine was. Did he have the vial? Did

they record that actually was Xeomin? There's just no --

Q. Which is inaccurate.

A. How do you tell --

Q. That's inaccurate.

A. -- it's just all -- the patient was unconscious.

Q. Ms. Elmquist, that's inaccurate.

A. Okay.

Q. Read the last sentence on page 1, under "Chief History. It says that it was reported that patient received 50 units -- see that? Of what?

A. Of Xeomin. But it doesn't say where. The face is a large place to inject things. If I'm -- if I'm doing a procedure on a face, I have to say exactly where I'm doing it.

Q. Okay. I understand.

A minute ago you said there's no medical records, there's no history of what occurred. I'm asking you the questions. Okay? Your -- counsel for the Board can redirect you.

Mr. McCleve was working in the ER that day. Right?

A. Correct.

Q. He was there, he helped treat this patient

in the ER. Correct?

A. Not that I can tell from the records.

Q. Okay. Interesting.

A. It seems like he gave information to the ER treating provider, but I didn't see that he was assisting in the ER care of the patient.

Q. Okay. He gave a complete and full medical history less than one hour after this occurred to the ER doctor.

A moment ago, you said that records are typically completed within 48 hours. Do you recall saying that?

A. Yes.

Q. Mr. McCleve reported to the ER doctor exactly what happened. And I understand you haven't heard him testify yet, but he's going to. The medical records are there in front of you, and you reviewed them. It says exactly what occurred. Correct?

A. I reviewed his email to the Board, which is not a medical record. Correct.

Q. I didn't ask you about that.

A. Okay.

Q. You said there's no medical records. You said there's typically records within 48 hours.

Mr. McCleve told the Board exactly where the treatment occurred. He told the Board exactly who the patient was a patient of, the medical spa. Right?

A. Correct.

Q. And so the Board didn't have that documentation to give to you. Right?

A. Are you referring to the medical records that the PA is keeping regarding this patient that haven't been submitted?

Q. Do you keep medical records for your patient or does the hospital keep them?

A. The hospital keeps them.

Q. Right.

What's an EMR?

A. Electronic medical records.

Q. Right.

Do you keep EMR at home?

A. I have access to it if I need it.

Q. Okay. Do you -- are you the custodian of your patient's records?

A. No. But if he's working for his private medical spa, I'm not sure if that's how that works. So if he has medical records --

Q. The records, I just put them in front of

you.

A. Are you talking about the ER physician's notes, or are you talking about his letter to the Board?

Q. I'm talking about the physician's notes.

A. Correct. I am -- I'm have those in front of me.

Q. Do you know if the Board -- after Mr. McCleve told the Board that the patient was a patient of a med spa, do you know if the Board sent a request for records to that med spa?

A. I do not.

Q. So you don't know if records exist, do you?

A. I didn't. Because from my understanding --

Q. You're making an assumption?

A. -- he said -- well, from the PAs notes, it was not clear that they had even opened it yet. He said that the business had not been official yet.

Q. Look at Exhibit 1. Do you see that?

A. Is this the letter from the Board investigator?

Q. Um-hmm. Do you see that?

A. Yes.

Q. All right. The Board's asking Mr. McCleve about the treatment rendered at North Vista Hospital. Do you see that?

A. Yes.

Q. He responded in Exhibit 2, correct, do you see that?

A. I'm now looking at Exhibit 2. Are you saying is that what Mr. Andreas was asking for? Is that what your question is?

Q. That's Mr. McCleve's response to the accusation about falling below standard of care and the treatment of rendering of Botox.

A. Yes. His response to the accusation, yes.

Q. In his response, he talks about his training and his work in the community of Las Vegas for over a decade. Correct?

A. Correct.

Q. And he talks about how he was about to go into business with Dr.~Sheep. Correct?

A. Yes.

Q. And he talks about what happened with this patient and how it came to be that he was in the ER that day. Correct?

A. Correct.

Q. And he admitted that he didn't have

records. Correct?
A. Correct.
Q. So do you know why we're here?
A. Yes.
Q. Well, if Mr. McCleve admitted to not having records, why do you need to testify?
A. Because they were asking me if this is appropriate. Like, there's no medical records --
Q. He's admitted --
A. -- to review in this case.
Correct.
Q. He's admitted wrongdoing. Did you read his letter?
A. I did read his letter. You've asked me that question.
MS. BRADLEY: I'm going to object to that because we've talked about whether or not she read the letter many times. I think that's asked and answered, and maybe it doesn't need to be asked again.
Thank you.
HEARING OFFICER HALSTEAD: All right. So I -- it has been asked and answered. I think Ms.~Zastrow is trying to make a point that's been made, so I anticipate she'll move on.

MS. ZASTROW: I'll save it for Mr. McCleve.

BY MS. ZASTROW:

Q. Do you know what the typical discipline is for a PA who doesn't -- who has a record violation?

A. Who has just a record violation? Well, I've seen that when I was in the PA advisory committee, they would handle things different ways. Sometimes there's a fine.

Q. Fine. Right?

A. Sometimes there's education.

Q. CMEs?

A. Sometimes people have a risk of their license. There's different --

Q. No. I said what was typical. Does somebody lose their license for not keeping records in one instance?

A. I don't know every history of every case that's ever been presented.

Q. Have you ever seen that?

A. No.

Q. You said typically there's a fine. Right?

A. Correct.

Q. Did you know that a PA can be supervised by DOs?

A. Yes, under a different board.
Q. Did you know that Mr. McCleve was supervised by a DO?
A. I did not.
Q. When you render your opinions, don't you think it's important to have all the facts in front of you?
A. When I'm doing a peer review, I go off the information I am provided.
Q. And it would probably make you really upset if the Board didn't give you all the information necessary to form your opinions. Correct?
A. I would think they would give me the information that I was required to review.
Q. Right.
But you didn't know that Mr. McCleve had a DO supervisor in the cosmetic world, did you?
A. No. Because that's a different board.
Q. Well, he can still perform the same procedures. Correct?
A. Correct.
Q. And he can perform procedures that his supervisor allows him to perform. Correct?
A. Correct.

Q. Now, I think the Board has conceded that their inflammatory comments in the Complaint are prejudicial. But just for the record, I'd like to point out something. If you would look back to the medical records at Exhibit 8, and turn to page 10 of 11.

A. Page 2 of 11?

Q. Ten. Tell me when you're there.

A. I'm there.

Q. Okay. So again, you said there's no record of the treatment, but here we've got a whole bunch of records you're looking at. Right here it says "1:25 p.m. note. Spoke to poison control." You see that?

A. Yes. And I just want to make a correction. I didn't say that the ER did not provide medical records. These are definitely medical records. I was just saying that in regards to the Botox injections, I was speaking of those records.

Q. Um-hmm.

You're not testifying that this patient suffered any adverse reactions because of Botox. Correct?

A. Correct. Because that was unclear from

toxicology.

Q. No. It was very clear. Correct?

A. That's what I mean. They did not --

Q. Exactly.

A. They did not determine the cause of the patient's symptoms.

Q. Understood. Understood.

HEARING OFFICER HALSTEAD: Ms. Zastrow, you may understand that, but I didn't get to hear her because you guys are continuing to speak over each other, so I didn't hear her. So can we please, again, be cautious of that?

And, Ms. Elmquist, can you please repeat your answer?

THE WITNESS: I'm sorry.

HEARING OFFICER HALSTEAD: Do you need the question repeated?

THE WITNESS: Yes, please.

HEARING OFFICER HALSTEAD: Ms. Zastrow, can you please repeat your question?

BY MS. ZASTROW:

Q. It's clear from the record that this patient did not sustain any adverse reaction from the Botox. Correct?

A. From the records, it was unclear what the

patient's reaction was from. There was no determination --

Q. That's not accurate.

A. -- in the medical record.

Q. That's not accurate.

MS. BRADLEY: So I'm going to object if she's going to argue with the witness. The witness --

HEARING OFFICER HALSTEAD: Stop.

Here's the problem: She's answering and you're arguing with her, telling her that's not correct, and while you're doing that, she's not finishing her answer.

So if she finishes her answer and then you want to point out that's not correct, that would help me. But interrupting her to do it is not helpful because it doesn't get her answer on the record and she doesn't get to complete it, and then I'm hearing what you're saying and not hearing her answer.

MS. ZASTROW: Understood. I thought she was finished with her answer.

HEARING OFFICER HALSTEAD: Ms.~Elmquist, please repeat your answer.

THE WITNESS: I was just stating that from

the medical records provided by the emergency room, they did not determine why the patient had this adverse outcome. And it said that most likely Xeomin toxicity was not the cause.

BY MS. ZASTROW:

Q. Exactly. So it's the opposite of what you said. They did determine that the Botox was not the cause. Correct?

A. No. They said it was unlikely.

Q. This patient was transferred to Sunrise. Right?

A. Correct.

Q. If there was a cause of the reaction, it'd probably be in those Sunrise records. Right?

A. I did not receive Sunrise records.

Q. Did you know the Board had them?

A. No.

Q. So just so it's clear for the record -- and again, I understand the Board's not making any accusation -- at page 10, at note 1:25, the ER physician says that they spoke with poison control, spoke with a toxicologist fellow -- that's an MD; right?

A. Correct.

Q. -- and stated that these signs and

symptoms were less consistent with a Botox toxicity. Recommend to explore other causes. Correct?

A. Correct. And that's exactly what I just said. Unlikely. Less consistent.

Q. And then at 4:23, they called back, and they said they do not believe that the medicine would cause extreme reaction. Do you see that?

A. Correct.

MS. BRADLEY: I want to object to this continued line of questioning. We've already talked about the fact that we haven't alleged that the Botox caused injury, and I believe Ms. Halstead already said that the fact regarding the patient being in the parking lot is, essentially, the background of how the Board and/or the hospital became aware of this issue.

Continued questioning about something that we've not alleged or not intending to prove -- based on the records, we can't prove it, what caused it.

MS. ZASTROW: Right. You did allege it, for the record --

MS. BRADLEY: I did not.

MS. ZASTROW: -- at number 7 and at number -- at number 7 and number 11 in the Complaint. But I will accept your withdraw of those

allegations.

MS. BRADLEY: No, I'm not -- excuse me. I am not withdrawing allegation 7.

HEARING OFFICER HALSTEAD: Okay. All right. Again, we went over this earlier, Ms.~Zastrow, you've hit the point home, and I'm not considering it, that the Botox caused the problem. And to the extent that that's implied, I've already said that I'm not taking it as that. And I'll make that clear when I make my order.

I think Ms. Bradley's also being clear that that was not the intent of -- well, I don't know what the intent was, but her -- she's made the point clear on the record that they're not pursuing that as a line of faults on behalf of Mr. McCleve. And I will make that clear in my order.

BY MS. ZASTROW:

Q. Ms. Elmquist, are you familiar with the American Academy of Facial Esthetics?

A. No.

Q. Are you familiar with professional guidelines for Botox administration?

A. No.

Q. What's the difference between therapeutic Botox and esthetic Botox?

A. Well, I do know that there's a difference between therapeutic Botox and cosmetic Botox.
Q. You don't know what it is. Correct?
A. No. I do.
Q. Okay.
A. They -- yes.
Q. You don't know what it is. Correct?
A. I do know what it is, yes.
Q. Okay. What is it?
A. Therapeutic Botox can be given for migraine headaches and different spasm conditions. And then cosmetic Botox is for cosmetic reasons.
Q. And are there different techniques for injecting?
A. Correct.
Q. And what are those techniques?
A. I don't know all the techniques, but I do know there's a difference.
Q. Right.
When was your review complete?
A. I would have to look at the date of my response.
September 25, 2024.
Q. Did you --
A. I'm sorry. Say it again.

Q. Did you draft a report with your findings?
A. Yes.
Q. Did you give that report to the Board's counsel?
A. Yes.
Q. When you draft a report, do you make recommendations?
A. They ask specific questions and I answer them.
Q. Oh, they do.
A. Correct.
Q. What questions do they ask you?
A. They ask if there was --
MS. BRADLEY: No. I'm just going to object because --
HEARING OFFICER HALSTEAD: Yeah. I don't want to --
MS. BRADLEY: -- (indiscernible) of her. Then and the questions, that's not public. We've already talked about --
HEARING OFFICER HALSTEAD: I've already ruled on that. You made your record, Ms.~Zastrow, that that's a problem. I anticipate that that will be addressed in the future.
MS. ZASTROW: Your Honor, this witness has

already testified. It's no longer confidential. They put her on the record. The confidentiality applies prior to the testimony.

HEARING OFFICER HALSTEAD: They have not admitted her report or sought to admit it.

MS. ZASTROW: Yes --

HEARING OFFICER HALSTEAD: You asked her if she did one. She said yes. She did not -- she's on the verge of going into the content of that, which is confidential.

MS. ZASTROW: Her report is her testimony, respectfully, Your Honor.

HEARING OFFICER HALSTEAD: I get your point. I don't run the show; I just call the balls and strikes at these hearings. If I was in charge of the world, that may not be how it works, but that's how it works according to the District Court, and I don't have authority to reverse it.

MS. ZASTROW: I respectfully disagree with that. You have all the authority. You are the judge in this case. You have the authority. You have been told by the Board that you do not, and they are wrong.

HEARING OFFICER HALSTEAD: Well, the District Court says I'm wrong, and the District

Court is the appeal court to my decision. So I'm going to go with the District Court on this one.

MS. ZASTROW: And the District Court didn't address these issues, Your Honor. They addressed -- but I'll move on. But I've made my record that Ms.~Elmquist prepared a report based on questions that were submitted to her by the Board.

BY MS. ZASTROW:

Q. Were you consulted on what charges to bring against Mr. McCleve?

A. No.

Q. Did you ever have any discussions with anybody at the Board about what charges to bring against Mr. McCleve?

A. No.

Q. What did you do to prepare for your testimony today?

A. Reviewed the records once again and reviewed my peer review.

Q. Have you ever been a respondent in a Medical Board proceeding?

A. I've been a respondent in a Medical Board proceeding. Do you mean have I ever had a complaint filed against me?

Q. No. People file complaints all the time.

Right?

A. Yes.

Q. Yeah. Patients -- a lot of patients file complaints. Right?

A. Yes, they do.

Q. In fact, in this case, the patient did not file a complaint, did the patient?

A. I am not aware.

Q. Yeah. Just backing up, you weren't aware that the patient did not file a complaint?

A. No. I just was aware that the Board was investigating an incident.

Q. Were you aware that they are investigating because, under Nevada law, when a licensee loses hospital privileges, it's required to be reported?

A. I do know that the -- the hospital board -- or the credentialing service of the hospital has to report it, yes.

Q. Okay. So have you ever been a respondent?

A. To a different case? Yes.

Q. You have been the target of a complaint?

A. I have been the target of a complaint, yes.

Q. How many times?

A. Just once.

MS. BRADLEY: I'm gong to object. This isn't relevant.

MS. ZASTROW: It is relevant.

MS. BRADLEY: No. NRS 630.336 says that unless a formal complaint is filed, any complaints reviewed and investigated by the Board with regard to a licensee are confidential, period.

We can look at Ms.~Elmquist's record online, it's a public record, and it clearly shows she's had no discipline, no formal -- no formal complaints ever filed against her. That's the public information. That's what you can ask about.

You can't ask about whether or not a complaint was received and closed prior to any disciplinary action.

HEARING OFFICER HALSTEAD: Okay. So here's the deal, when "complaint" is referenced in the NRS -- we generally say "complaint" and "formal complaint." Right? Because you have the initiating complaint by someone who has a problem and you have the formal complaint for proceedings like we're having here today. So we've only been using the term "complaint" in this line of questioning.

To the extent that Ms. Elmquist said she has complaints and that's a common thing for, you

know, people to have to deal with, there wasn't a distinction made as to whether she was a respondent with regard to a formal complaint. Ms.~Bradley has, apparently, clarified that.

I think the question is, you know, how have you -- if you want to ask her that, Ms. Zastrow, you can. But, you know, going into other complaints that did not result in a formal complaint, other than saying that they've happened, I don't know how useful that is. So with --

MS. ZASTROW: Your Honor, it goes --

HEARING OFFICER HALSTEAD: -- that, Ms.~Zastrow, you can continue the line of questioning within those parameters.

MS. ZASTROW: Your Honor, this is cross-examination, Ms.~Bradley keeps telling the witness what she can and cannot say, and that is for you to decide.

HEARING OFFICER HALSTEAD: And I just decided it. And I'm asking you guys to use your terms specifically between "complaint" and "formal complaint," and to ask your questioning within the guidelines that I just stated. That's what will help me.

MS. ZASTROW: This is cross-examination.

It goes to her credibility.

HEARING OFFICER HALSTEAD: And I just allowed you to ask the question, so I don't know why you're arguing with my ruling.

MS. ZASTROW: I'm not arguing, Your Honor. I'm making a record. I'm not arguing with you.

HEARING OFFICER HALSTEAD: I'm quite clear what cross-examination is, and I just gave you allowance to continue. And yet you're taking issue with it.

MS. ZASTROW: I'm not taking issue with it, Your Honor. Like, my client, this is very serious. I'm making a record, Your Honor. I'm not arguing with you at all whatsoever.

HEARING OFFICER HALSTEAD: Continue your questioning and be clear about your use of complaint and formal complaint within the parameters that I've stated so that we can understand the questions clearly.

BY MS. ZASTROW:

Q. Ms.~Elmquist, did you understand my question?

A. I have never had a formal complaint.

Q. Thank you.

Of the -- did you say you investigated

12 -- I'm sorry, not investigated. You've been a peer reviewer on 12 cases. Is that what you said?

A. Correct.

Q. Of those 12, how many resulted in a formal complaint?

A. One other prior.

Do you mean when this has happened where we've gone to, beginning with the judge, and -- I've only gone -- have to testify one other time?

Q. No. My question is exactly what Officer Halstead was just talking about, a formal complaint. Do you know the difference between --

A. I wouldn't know if they went farther, because all I'm asked to do is a peer review. And then if there is a trial, I've only been called one other time.

Q. Okay. So if a formal complaint is filed, you're not told about that?

A. I guess I'd have to have you clarify. I am contacted by the Board occasionally to help with a peer review. I submit a peer review, and I never usually hear anything back. So I'm not subject to that information, I guess.

Q. So no one at the Board tells you whether or not a formal complaint is filed based on your

peer review?

A. No, not that I'm aware.

MS. ZASTROW: Your Honor, I think I'm about done with this witness. I don't know if we could take a five-minute break. I -- a courtesy break because I need to go to the restroom.

MS. BRADLEY: I would concur with that request, please.

HEARING OFFICER HALSTEAD: Okay. It's 2:06, let's come back at 2:15.

(Recess from 2:06 p.m. to 2:15 p.m)

HEARING OFFICER HALSTEAD: We're back on the record In the Matter of Charges and Complaint Against David Kayle McCleve, PA-C, case number 24-42281-1. We took a small break to reconvene at 2:15. It is now 2:15.

Ms.~Elmquist, I remind you that you remain under oath.

Ms.~Zastrow, you had completed your cross-examination. I don't know if you took a break to determine if that's what you wanted to do or not, but it's still your witness.

MS. ZASTROW: Thank you, Your Honor. And just for the record, I turned up my volume, so,

hopefully, I won't be inadvertently interrupting anybody anymore. There is a tiny bit of a delay, so I apologize to Ms.~Elmquist and to the court reporter. Also, there's sun on my face, so please don't be distracted.

BY MS. ZASTROW:

Q. I just have a couple more questions, Ms.~Elmquist, if that's okay.

A. That's okay.

Q. Ms. Elmquist, I asked you when you completed your review, and you said September of 2024. Is that correct?

A. Correct.

Q. When were you asked to review this case?

A. I don't recall.

Q. Do you have notes so that you could refresh your recollection?

A. I did initially. But the trial, as far as I was aware, was initially set for several months ago and then got canceled, and I had a bunch of notes that I left with the Board.

Q. So what would there be in a record that would tell you when you were asked by the Board to review this case?

A. It would be a letter that they sent me or

a phone call that they gave me.

MS. BRADLEY: I can object to this. I have a witness that I can recall that I believe will be able to answer this, Ms. LaRue. She's the one that sent it.

HEARING OFFICER HALSTEAD: Well, if Ms.~Elmquist can't answer it, then she can say so. This is the witness who is here.

THE WITNESS: I don't recall the exact date.

BY MS. ZASTROW:

Q. Understood. But it would be in a letter or a phone call?

A. Correct.

Q. Okay. Not to belabor it but to try to refresh your recollection, was it -- has it been in the last 12 months?

A. I believe so.

Q. Okay. So it wasn't more than a year ago?

A. Well, if this was dated September 25th, to the best of my knowledge, but I would have to address the letter.

Q. Okay. Typically when you're asked to review something, how long do you take to review it?

A. They -- when they send you the formal

letter asking you to do it, they give you a time frame of when you need to respond. I can't recall the exact details of that either.

Q. Understood. I'm just trying to get to a timeline. Is it typically 30 or 60 days or 90 days?

A. Most likely. I think I've done it within 30 days.

Q. Okay. So is it possible that you were asked to do this review 30 days prior to September? What did you say, to September what?

A. My letter was dated September 25, 2024.

Q. So if we -- and we can ask another witness, but is it possible that you were asked maybe in August of 2024?

A. I don't know.

Q. Is it possible you were asked in July?

A. I don't know.

Q. Would you have been asked as far back as May, or would that be --

A. I don't know.

Q. Because that would be June, July, August, September, four months before your report.

A. I don't recall the date. I'm sorry.

Q. Okay. That's okay. I was trying to help refresh your recollection.

MS. ZASTROW: I don't have any more questions. Thank you.

HEARING OFFICER HALSTEAD: Thank you.

Ms.~Bradley, redirect?

MS. BRADLEY: Thank you. Before I start my redirect, I did want to ask -- because I need to correct the record. NRS 233B.123, sub 5, talks about judicial notice of cognizable facts and information that's available.

Ms. Zastrow has been talking -- virtual connectivity issues.

HEARING OFFICER HALSTEAD: As I was saying, Ms.~Bradley, I understand you want me to take judicial notice of something which is a public representation from your website regarding supervisory time frames with a DO and respondent, Mr. McCleve. Is that what -- is that correct? Did I state that correctly?

MS. BRADLEY: Not quite. This information is available on the Nevada Board of Osteopathic Medicine, so it's not our website. It is a public website, though, and it's B-O-M, which stands for Board of Osteopathic Medicine, dot N-V, for Nevada, dot G-O-V.

HEARING OFFICER HALSTEAD: All right. I

just wanted to know the website you're referring to. The basis that I am getting to is this is based on questioning by Ms.~Zastrow. Right? She has referenced and asked in her questions whether Ms.~Elmquist -- correct me if I'm wrong -- was aware that she was being supervised by a DO or whether he could be supervised by a DO, and that is the basis of you wanting to present this to me and for me to take judicial notice. Is that accurate?

MS. BRADLEY: Partly. She also referred to the physician that was supervising Mr. McCleve through that board, Dr. Winn, by name. We didn't know that there was going to be any representations regarding DOs or DO supervision until today.

The records show that his license was expired with them in December of 2022, so we don't think it's relevant, and we just want to make sure the record is clear and that you take notice of that.

HEARING OFFICER HALSTEAD: Okay. Well, a couple things.

MS. ZASTROW: Can I respond?

HEARING OFFICER HALSTEAD: Yes. But let me finish what I'm saying, and then you can also respond to what I'm saying so you can make a clear

response at one point.

First of all, I don't take -- Ms.~Zastrow's questions are not evidentiary, so I don't take her questions as evidentiary fact. I don't have any records before me either way, other than Exhibit 7, of who is supervising Mr. McCleve and when. So those are the only records I have.

So if something comes up in rebuttal and you would like to present that, it would assist me if that was done in rebuttal and not in the midst of a case, and then we could handle it in rebuttal. Keeping in mind that I don't have any evidence of a DO supervising Mr. McCleve; I only have that in questions.

So if he were to testify to that, which I imagined he would do, then you could cross-examine him on that, and then you could present that in rebuttal. I think that would be an effective way to do this to keep things on track.

So I'm not precluding you from doing this. I want you to put a pin in this right now. I don't have any evidence of it because it's only been questioning. And so when evidence comes before me, then I ask that you address this and make the record at that time.

MS. BRADLEY: Thank you.

HEARING OFFICER HALSTEAD: Okay. So anything else before we move on?

MS. ZASTROW: Yes, Your Honor. You said I could respond.

HEARING OFFICER HALSTEAD: Go ahead, Ms.~Zastrow.

MS. ZASTROW: Thank you. And for the record, I think you summarized my position on that. I was questioning the witnesses. I'm not a witness. I wasn't providing evidence, as you so accurately pointed out.

My point was to show the lack of a complete investigation. Any witness can be asked, including Mr. McCleve, who was his supervisor at what time, but I don't think it's appropriate for counsel to testify.

Thank you.

HEARING OFFICER HALSTEAD: And I didn't take that as testimony; I took that as asking me to take judicial notice. But since I don't have any evidence of a DO supervising at this point, I just ask that when it -- when and if that becomes an issue and someone actually testifies to it, then we address it in due course. I think everyone

understands my position.

Ms. Bradley, do you want to proceed to redirect?

REDIRECT EXAMINATION

BY MS. BRADLEY:

Q. Have you reviewed cases before for the Board wherein a violation of NRS 630.3062, sub 1, sub A, which is the failure to maintain complete records, is potentially an issue in that case?

A. Yes.

Q. And how would you classify a violation of that statute?

A. If they're not legible, accurate, and complete.

Q. Okay. And so have you seen --

MS. ZASTROW: I'm trying to wedge an objection. Sorry. Yeah, that question calls for a legal conclusion, Your Honor. And it's also outside the scope.

HEARING OFFICER HALSTEAD: I think the question was how she would characterize it, which goes to her ability to testify to it.

Did I state that correctly, Ms.~Bradley?

MS. BRADLEY: That was what I was trying to ask.

HEARING OFFICER HALSTEAD: That's how I took your question. Do you want to rephrase it?

MS. BRADLEY: Yes.

HEARING OFFICER HALSTEAD: You don't have to. I just don't remember what it was. So I'm trying to --

BY MS. BRADLEY:

Q. When you've reviewed cases before and there were issues with the records, how would you characterize those cases?

MS. ZASTROW: Objection. Relevance.

HEARING OFFICER HALSTEAD: Ms.~Bradley, do you want to make a proffer of where you're going with this so I can determine if it's a relevant line of questioning?

MS. BRADLEY: My intent is to have her talk about violations she's seen of this chapter -- of this statute and, perhaps, classify the different kinds of things that occur to violate it.

So, for example, maybe not meeting one portion of it, but also I think not having a record at all, they're different things. Perhaps both actually speak to whether this was violated, but I think she can classify the kinds of things she usually sees, and then maybe what's an issue in this

case.

HEARING OFFICER HALSTEAD: Well, I think what helps me is just what's issue in this case. I don't think it matters what she's seen in other cases. It would help me if you just kept it limited to what's the problem in this case.

MS. BRADLEY: Okay.

BY MS. BRADLEY:

Q. Ms.~Elmquist, I think on cross, you were asked about what -- essentially, whether your belief that this was malpractice was solely based on the lack of the record or the incomplete medical records in this case.

Is that the only reason that you believe that there was malpractice in this case?

A. I feel that there's just nothing to review, so you can't say how the patient was treated, which falls below the standard of care.

Q. Okay. But is the standard of care only about patient care -- I mean, only about the service?

A. No. It's about documenting and treating and making a record.

Q. Okay. And I believe when I asked you on direct, we talked about how this is alleged in the

Complaint with regard to malpractice, and we also talked about the failure to maintain complete records.

Is it possible for a record's violation to be so egregious that it also constitutes malpractice?

A. I guess so, because you can't see -- you can't see the records. You don't know what happened. You can't paint a picture. It's kind of a strange situation because there's no record to review.

Q. Okay. Let's --

MS. ZASTROW: Your Honor, objection to the extent that that question called for a legal conclusion. That's a conclusion for the trier of fact.

HEARING OFFICER HALSTEAD: I'm just taking that as her opinion as the testifying peer reviewer. I'm not taking it as a determination of a legal conclusion.

BY MS. BRADLEY:

Q. Let's look at the definition of malpractice as contained in the Board's regulations and also in the Complaint. I'll read it to you because I don't think you have the Complaint in

front of you, the filed formal Complaint. Let me pull up the version as it exists today.

So have you -- you're familiar with regulations that the Board has adopted?

A. Yes. Correct.

Q. Okay. And you testified earlier that when you were on the advisory committee, you helped with input on how those regulations were modified and put into place?

A. Correct.

Q. Okay. So I am going to read for the record the current version of NAC 630.040. And I do note that this contains a couple revisions that were added after the fact. One -- but I'm just going to read it as it is today:

"For the purposes of this chapter and Chapter 630 of NRS, malpractice means the failure of the physician, physician assistant, anesthesiologist assistant, practitioner of respiratory care, or perfusionist in treating a patient to use the reasonable care, skill, or knowledge ordinarily used under similar circumstances."

Are you familiar with that regulation and that standard?

A. Yes.

Q. And is that the standard that you've been testifying to today regarding malpractice?
A. Correct.
Q. So as part of reasonable care, skill, or knowledge, does part of that involve creating a medical record?
A. Yes.
Q. By the treating provider?
A. Correct.
Q. Okay. And if we look at Exhibit 8, that is the medical records that have been admitted from North Vista Hospital, can you tell us who was the author of these records based on your review?
A. Dr. Clark.
Q. How do you know it was Dr. Clark?
A. Because he's signed and dated the note.
Q. And what page are you looking at for a sign-and-date?
A. It's NSBME 024 on page 10 and 11.
Q. Can you read that attestation there?
A. "I personally performed the services described in the documentation. I have reviewed and edited, as indicated in the documentation, which was dictated to the scribe in my presence. This documentation accurately records my words and

actions. Dr. Clark, MD."

Q. And what's the date of that note?

A. April 10, 2023 at 9:17.

Q. When we talk about the standard for records, who has the responsibility to create and maintain records for a patient?

A. A provider.

Q. And what do you mean by "a provider"?

A. So the physician, physician assistant, nurse practitioner.

Q. And that's the one that's providing the care that's being documented?

A. Correct.

Q. Okay. So if you look at Exhibit 8, who is the person that is documenting care and providing care in this case?

A. Dr.~Clark.

Q. Is there a mention of Mr. McCleve providing care of the patient in this record?

A. No.

Q. And if we look at the paragraph on the first page, it starts with "It was reported," can you read that for us?

A. Are you talking about under the chief complaint?

Q. Yeah, that paragraph under the chief complaint. And then it talks about the patient's age. And then there's, like, three sentences, and the last one says "It was reported."

A. "It was reported that patient received 50 units of Xeomin to the face less than an hour prior to arrival."

Q. Okay. So what does it mean to you when you read "It was reported"?

A. That somebody said it, but we don't really know who.

Q. Right. And would this constitute a medical record regarding the receipt of the 50 units of Xeomin?

A. No. The patient is unresponsive and can't speak for themselves, so I wouldn't -- I mean, I don't know.

Q. Okay. Are there things, aside from the medical records in this case, that lead you to the conclusion that Mr. McCleve committed malpractice?

A. No. And I don't know if I'm allowed to refer to my peer review or if that's -- but I had initially stated that it was difficult to come to the conclusion because there was no records, medical records provided.

MS. ZASTROW: Your Honor, I'm going to object to this. I hate to interrupt her, but the Board is trying to pick and choose what she can and cannot say, and we don't get a copy of that peer review.

HEARING OFFICER HALSTEAD: Yeah, I don't think she should be testifying to what her peer review is, unless you intend to open that door. She wants to say -- she can say her conclusion without referring to the report.

MS. ZASTROW: Yeah.

HEARING OFFICER HALSTEAD: If you're going to open that door for her, then --

MS. BRADLEY: Didn't ask about the report, and I wasn't intending for her to talk about the report.

HEARING OFFICER HALSTEAD: Well, she prefaced her answer and you didn't interrupt her.

MS. BRADLEY: She started to respond and I didn't get a chance to say anything because I think Ms.~Zastrow leaned in to say please don't talk about your report.

HEARING OFFICER HALSTEAD: Okay. Well, I'm going to reiterate that. Please don't talk about your report.

MS. BRADLEY: Okay.

HEARING OFFICER HALSTEAD: And, Ms. Bradley, do you want to ask the question so we can sort of get back on track?

MS. BRADLEY: Yes.

BY MS. BRADLEY:

Q. Ms.~Elmquist, I'm asking you, what factors in your review of this case -- aside from the medical records, are there other things that led you to believe malpractice occurred in this case?

A. No. Because there's no records.

Q. I think you talked about violating hospital policy earlier and that that may not always constitute malpractice. I think you said that in response to Ms. Zastrow.

Are there --

MS. ZASTROW: Objection. Asked and answered. This is well exceeding redirect.

HEARING OFFICER HALSTEAD: She didn't finish her question. I took that as a preface to what she was going to ask, but she didn't get to finish asking.

So, Ms.~Bradley, continue.

MS. BRADLEY: Yeah, this is my preface.

BY MS. BRADLEY:

Q. Ms.~Zastrow asked you hypotheticals and about whether or not violating hospital policy always constitutes malpractice, and I believe you said no.

Are there times that violating hospital policy would constitute malpractice, in your opinion?

A. Of course.

Q. And can you give an example of a time that violating hospital policy would constitute malpractice, in your opinion?

A. Well, I mean, it would --

MS. ZASTROW: Objection to the hypothetical, an example. We're talking about this case and the facts in this.

HEARING OFFICER HALSTEAD: Well, she's allowed to give a hypothetical. I mean, we're not going to go too far down the road of inapplicable --

MS. BRADLEY: So I'll withdraw the question.

HEARING OFFICER HALSTEAD: -- but I think she can ask a hypothetical and tie it in if that's what she's inclined to do.

Ms.~Bradley, go ahead.

MS. BRADLEY: I'll withdraw the question and rephrase.

BY MS. BRADLEY:

Q. Are the facts at issue in this case the kind of situation that you believe violating hospital policy would also constitute malpractice?

A. I'm sorry. Say that one more time.

Q. Are the facts at issue in this case, the fact that a patient was injected with botulinum toxin during an emergency department shift, at a hospital, the patient wasn't registered, the patient wasn't actually a proper patient of the hospital -- and that violates hospital policy, sure, but do you think that also constitutes malpractice?

A. I don't know that -- I could say that because I don't -- I keep going back to it, but you just don't know what happened. It was definitely against hospital policy to be doing that. It's -- he -- I don't know if he was storing medication or I don't know what medication it was, I don't know. So, technically, it could, because the patient -- who knows if it was truly Xeomin. Nothing is documented.

Q. Let's look at the definition again of malpractice. Is it reasonable care to bring a

patient to the hospital while you're working, they're not a documented patient at that hospital, and inject medications into their face?

MS. ZASTROW: Objection. Asked and answered.

MS. BRADLEY: I don't believe I asked this question.

HEARING OFFICER HALSTEAD: Go ahead, Ms. Elmquist, you can answer.

THE WITNESS: No.

BY MS. BRADLEY:

Q. That's not reasonable care?

A. Correct.

Q. Okay. Is it reasonable skill to bring a patient that is not registered at the hospital, not a patient that the hospital, is even aware is there and inject medication into their face?

A. No.

Q. And why are you saying that that is not reasonable care or reasonable skill?

A. Because the patient is not a registered patient of the hospital, there's no chief complaint, there's no history of present illness, there is no documentation of the medication given, there's no lot numbers, there's no expiration date, there's no

description of the procedure: where, when, how.

Q. But aside from the record, I mean, if somebody came to the hospital and wasn't seeking emergency room services, would you provide services to them?

A. No.

Q. And why not?

A. Because they're not a patient of the hospital.

Q. So who are you treating while you're at the hospital on shift?

A. Patients that are coming to the hospital by ambulance, by private car.

Q. And do you think that's something that -- well, do you think that's something that is known by treating physicians in an emergency department in the hospital?

A. Yes. I don't think you have anybody in the ER to do anything, a procedure or anything else, that's not a registered patient.

Q. Okay. And is this something that you believe is part of the common knowledge of physician assistants working in emergency departments?

A. Yes.

Q. And so based on that, do you believe that

inviting -- you know, the situation in this case, inviting a patient to the hospital who's not registered, the hospital is not aware, and that person was injected with medications, does that constitute malpractice, in your opinion?

A. Yes.

Q. And does it matter to you if the services were provided in a, I guess, appropriate manner?

A. Yes. If they were provided in an appropriate setting, under appropriate supervision, and documented, that's different.

Q. But would it ever be appropriate to provide services that are not emergency room services to a patient in the emergency room?

A. No.

Q. Yeah. So it doesn't matter if the services were provided correctly or not. It's not appropriate. It's not reasonable. It would constitute malpractice to do that kind of injection in the emergency department?

A. Yes.

Q. And if we talk about violations, again, regarding medical records, the statute says -- NRS 630.3062, sub 1, sub A, this is the requirement for medical records, it says that they must be timely,

legible, accurate, and complete. Do you see timely records from Mr. McCleve regarding his treatment of Patient A in this case?

A. No.

MS. ZASTROW: Asked and answered, Your Honor. We're covering the same ground.

HEARING OFFICER HALSTEAD: I'm -- I anticipate Ms.~Bradley was going to move on by her next question. So go ahead, Ms.~Bradley.

BY MS. BRADLEY:

Q. Do you see legible records regarding the care provided to Patient A by Mr. McCleve in this case?

A. No.

Q. Do you see accurate medical records created by Mr. McCleve regarding the care he provided to the patient in this case?

MS. ZASTROW: Same objection, Your Honor.

MS. BRADLEY: What was the objection? I couldn't hear her.

HEARING OFFICER HALSTEAD: Her objection is asked and answered. And just to the extent it may help you, Ms.~Bradley, I don't have any records from Mr. McCleve, so they can't be legible or accurate if they don't exist.

MS. BRADLEY: Okay.
BY MS. BRADLEY:
Q. Is the failure of maintaining a record at -- making a record regarding treatment, do you think that could rise the level of malpractice?
MS. ZASTROW: Objection. Asked and answered. Again.
HEARING OFFICER HALSTEAD: I think it's along the same lines of a prior question, but I think the basis for it is somewhat different.
You can go in and answer, Ms. Elmquist.
THE WITNESS: Could you repeat the question?
BY MS. BRADLEY:
Q. My question was whether the absence of a record could rise to the level of malpractice in and of itself?
A. Yes.
MS. BRADLEY: Can I have about 30 seconds to look at my notes, Ms. Halstead?
HEARING OFFICER HALSTEAD: Yeah. So we'll stay on the record, and I'll just -- just let us know when you're ready.
MS. BRADLEY: I did want to correct one piece of information Ms. Elmquist said in response

to Ms. Zastrow.

BY MS. BRADLEY:

Q. With regard to preparing for the hearing in this case, do you recall having a telephone call with me and Ms. Contine regarding the case?

A. Yes.

MS. BRADLEY: I just want to make sure the record was clear that she did have a conversation with me prior to today's hearing.

I have no further questions.

MS. ZASTROW: Your Honor, the redirect went way beyond the scope of direct, and I would request a very limited, short recross so that I don't have to call her back again.

HEARING OFFICER HALSTEAD: How limited are you talking?

MS. ZASTROW: Ten minutes.

HEARING OFFICER HALSTEAD: Okay. I'm going to hold you to that.

MS. ZASTROW: Understood.

HEARING OFFICER HALSTEAD: Thank you. You'll be done at 2:57.

MS. ZASTROW: Understood.

RECROSS-EXAMINATION

BY MS. ZASTROW:

Q. Ms.~Elmquist, earlier on my questions, you said the only factor in malpractice in this case was the lack of records. In fact, you said you couldn't opine on malpractice beyond that because there were no records to review. Do you recall that?

A. Yes.

Q. Okay. Now you changed your testimony on the questions of Ms.~Bradley and said that it's malpractice, in and of itself, to bring in a patient in an ER for treatment in which that patient's not registered for. Is that what you said?

A. Yes.

Q. That in and of itself is not malpractice, is it?

A. Well, she was asking me if it was -- by definition when she read the definition, if it was lacking skill. If I could refer to the words of that definition again.

Q. How does it lack skill to administer Botox?

A. How does it lack skill to not keep records?

Q. All right. Again --

A. You're talking into the definition.
Q. You're talking about recordkeeping. Correct?
A. Correct.
Q. The entire bases of your opinion is that -- irrespective of what Mr. McCleve wrote to the Board, irrespective of the ER records, it's your opinion that the lack of medical records constitutes malpractice. That's the sum of your testimony. Correct?
A. Correct.
Q. You can't testify about the standard of care of Botox administration because you've never administered Botox. Correct?
A. Correct. But I can speak to the fact of what is reasonable skill for any PA of recordkeeping and patient care.
Q. Recordkeeping.
A. And patient care.
Q. We've covered that ad nauseam. You can't testify about patient care of a Botox patient because you've had no training. Ms.~Elmquist, what training do you have in cosmetic procedures?
A. None.
MS. BRADLEY: I'm going to object. That's

asked answered. She already asked for that on cross before.

HEARING OFFICER HALSTEAD: She did. But frankly, you've both been a little bit repetitive. I get the point, so maybe we can -- she's under her time limit.

Ms. Zastrow, I don't mean to talk about you like you're not here, but, go ahead, so we can get this wrapped up.

BY MS. ZASTROW:

Q. I'm not trying to be repetitive, Ms. Elmquist; I'm trying to make your testimony very clear because it's shifting.

I want to be very clear for the record that you have no training in cosmetic procedures. Correct?

A. Correct.

Q. You're not qualified to testify about the standard of care, let's say liposuction. Correct?

A. I could testify --

MS. BRADLEY: Objection. Relevance.

THE WITNESS: I'm not trying to testify --

MS. BRADLEY: Objection --

HEARING OFFICER HALSTEAD: Whoa, whoa. There's an objection. Ms.~Bradley, the objection?

MS. BRADLEY: My objection is I don't know how the standard of care for liposuction is relevant to this case when that's -- there's no allegation regarding liposuction.

HEARING OFFICER HALSTEAD: Because she's making a comparison that if she -- it's a comparison that Ms.~Zastrow is trying to make.

Go ahead. I don't want to take too much time, Ms. Zastrow, so go ahead.

MS. ZASTROW: I was waiting for her to answer the question.

THE WITNESS: Yes. I was telling you that I may not be able to speak to liposuction particularly, or Botox, but what I'm saying -- and I want my record to be clear as well -- is that I will do it as expected of me as a PA ethically, and to treat my patients with care. And to do that, you have to say the story of what happened.

And if you're not saying what happened in your story, that could be malpractice because nobody knows what you're doing to your patients. We wouldn't just let doctors out there treating patients without documenting anything on them. That would be very bad and dangerous.

BY MS. ZASTROW:

Q. I'm limited in time. I'm limited in time. I don't mean to be rude, but you said that over and over and over again. Your testimony is limited to the lack of a record.

But Ms. Bradley asked you about skill. You can't testify about the skill of administration of Botox, can you?

A. Part of our skill and training is keeping documentation of what we're doing.

Q. No.

A. You keep asking me the same question. I'm sorry. I'm not --

Q. No.

A. I don't understand. You keep asking me the same thing.

Q. Try to respond without referencing records. Okay? Pretend it's 1965 and we don't do recordkeeping. We're just talking about what did you do to the patient.

You can't testify about skill with cosmetic procedures because you've never had any training on them. Correct?

A. Correct.

Q. Your supervising physician is not a

cosmetic or a plastic surgeon or an MD with any cosmetic experience. Correct?

A. Correct.

Q. You're not a PA with any skill whatsoever in any injectables. Correct?

A. I inject lots of things during the day in my job. Not injectables, such as cosmetic injectables, but I do do injections.

Q. You know what I'm asking you?

A. No. I'm --

Q. I'm asking --

A. -- you to clarify.

Q. I'm asking you about cosmetics. Right?

A. Right.

Q. You're not qualified to testify about cosmetics. Correct?

A. I'm qualified to testify that anything I would be injecting in a patient, I would be making sure I had records of that.

Q. So it's your testimony that you're qualified to testify about the standard of care of a cosmetics of a PA?

A. No. Any medication or procedure, I am qualified to testify about that. And it --

Q. So you --

A. -- (indiscernible) a procedure.
Q. So is it your testimony that you can go out and administer Botox tomorrow because you testified about it today?
A. No. I'm just telling you that if I was going to do a procedure on a patient, that I would make sure that I had documents to paint the picture so that everybody could know what I'm doing.
Q. That's very clear, you want documentation. But can you go out tomorrow and inject a patient with Botox?
A. No.
Q. But you want to testify today about whether or not the injection in this case fell below the standard of care. Correct?
A. Yes.
MS. ZASTROW: I don't have any more questions, Your Honor.
HEARING OFFICER HALSTEAD: Thank you.
Ms.~Bradley, did you have any redirect at this time? It's your witness.
MS. BRADLEY: I think we would excuse Ms.~Elmquist at this time and reserve the right to recall her in a rebuttal case, should we need to.
HEARING OFFICER HALSTEAD: Okay. Thank

you, Ms.~Elmquist. That means that you're subject to recall, so please keep in touch with Ms.~Bradley.

THE WITNESS: Okay.

HEARING OFFICER HALSTEAD: Thank you.

THE WITNESS: Thank you.

HEARING OFFICER HALSTEAD: Okay. So as everyone knows, I have an appointment that I need to get to. I don't see the point of starting another witness at this point.

Ms. Bradley, who is going to be your next witness?

MS. BRADLEY: I was torn because I intended to call Mr. McCleve and Ms.~Linn, and I was going to take them out of order. But I think if we're going to do tomorrow, I think I'll probably call Ms. Linn and then Mr. McCleve later tomorrow.

HEARING OFFICER HALSTEAD: Okay. Ms.~Zastrow, I'm not sure what you're going to be doing tomorrow, so let me just ask as a general matter of concern.

I did not -- we took a long time with that first witness this morning, which is absolutely fine, but because we really scheduled this for one day with sort of tomorrow is a spillover, I have an appointment at 2:45 tomorrow.

I'm just asking you both if that is something that I'm going to need to reschedule if you think we'll go that late?

MS. BRADLEY: It's hard to anticipate. I will put on the record that I have an appointment tomorrow from 12 to 1. I'll probably need to leave here approximately ten minutes to 12, and I probably won't get back until approximately ten minutes after 1. And so I do have that. But I have, otherwise, the rest of the day available.

I hadn't thought that I would need the whole day, but given how today's gone, I don't know how to answer. I'm sorry.

HEARING OFFICER HALSTEAD: Ms.~Zastrow?

MS. ZASTROW: Thank you. I don't know why Ms. Linn's being called. If she's being called to duplicate testimony or authenticate records, it's not necessary. I mean, that's up to the Board, but I think the records have been authenticated at nauseam.

So from my perspective, we could be done with Mr. McCleve. There's no reason to recall him. They can call him and treat him as a hostile witness and cross-examine him. I don't take issue with that.

I do take issue with having other conflicts. Not you, Your Honor. But my client has the first job that he's had in a year because of these cases, and he's having to take off work. So I suppose we can break from 12 to 1, and we'll break at 2:30. Absolutely not a problem.

HEARING OFFICER HALSTEAD: Well, 12 to 1 would be the lunch hour anyway. The conflict is me, and I've offered to move that if need to be.

MS. ZASTROW: That's up to whether or not they're going to call Ms. Linn.

HEARING OFFICER HALSTEAD: Okay. Well, I'm going to move it just to be safe, so we'll have tomorrow morning and all afternoon if we need it.

Anything further before we go off the record for tonight?

MS. BRADLEY: No, thank you.

MS. ZASTROW: No, thank you, Your Honor.

HEARING OFFICER HALSTEAD: Okay. We'll reconvene tomorrow here on Zoom at 8:30.

(Proceedings recessed at 2:56 p.m.)

STATE OF NEVADA)
) ss.
COUNTY OF WASHOE)

I, BRANDI ANN VIANNEY SMITH, do hereby certify:

That I was present on September 17, 2025, via Zoom for the hearing and took verbatim notes of the proceedings entitled herein, and thereafter transcribed the same into typewriting as herein appears.

That the foregoing transcript is a full, true, and correct transcription of my notes of said proceedings consisting of 265 pages, inclusive.

DATED: At Reno, Nevada, this 30th day of September, 2025.



BRANDI ANN VIANNEY SMITH

BEFORE THE BOARD OF MEDICAL EXAMINERS
OF THE STATE OF NEVADA

FILED
SEP 30 2025
NEVADA STATE BOARD OF
MEDICAL EXAMINERS
By:

In the Matter of Charges and Complaint Against:

Case No. 24-42281-1

DAVID KAYLE MCCLEVE, PA-C,

Respondent.

_____/

TRANSCRIPT OF HEARING PROCEEDINGS
DAY 2

Via Zoom
Wednesday, September 18, 2025

Reported by: Brandi Ann Vianney Smith
Job Number: 7618700, Nevada Firm Lic #053F

A P P E A R A N C E S:

THE HEARING OFFICER:	PATRICIA HALSTEAD, ESQ.
FOR THE INVESTIGATIVE COMMITTEE OF THE NEVADA STATE BOARD OF MEDICAL EXAMINERS:	SARAH BRADLEY, ESQ. DEONNE CONTINE, ESQ. Nevada State Board of Medical Examiners 9600 Gateway Drive Reno, NV 89521 sbradley@medboard.nv.gov
FOR RESPONDENT:	LISA ZASTROW, ESQ. Garin Law Group 9900 Covington Cross Drive, Suite 210 Las Vegas, NV 89144 lzastrow@garinlawgroup.com

ALSO PRESENT:
Mercedes Fuentes, Legal Assistant

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RENO, NEVADA -- THURS., SEPT. 18, 2025 -- 8:30 A.M.

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HEARING OFFICER HALSTEAD: We're back on the record In the Matter of the Charges and Complaint Against David Kale McCleve, PA-C, case number 24-42281-1. We started this matter yesterday on September 17, 2025, and it's continuing to today's date of September 18, 2025.

Counsel, can you please state your appearances. Ms.~Zastrow, you can go first.

MS. ZASTROW: Good morning. Lisa Zastrow for Mr. McCleve.

HEARING OFFICER HALSTEAD: And I note that Mr. McCleve is present also.

Ms.~Bradley?

MS. ZASTROW: Yes, Your Honor.

MS. BRADLEY: Sarah Bradley, Deputy Executive Director, on behalf of the Investigative Committee.

I am noticing a problem, and I'm so sorry. I may need to call my IT folks. My drive where all of my documents are is apparently not showing in my list. It should be. I think it's a quick fix, but

that's where my questions are and my notes.

I'm sorry, I don't know what else to say other than that.

HEARING OFFICER HALSTEAD: Okay.

MS. ZASTROW: It happens to the best of us.

HEARING OFFICER HALSTEAD: Do you need to take a break to deal with that, or do you want to -- how do you want to handle that?

MS. BRADLEY: I think I may need a break. Normally what happens when I restart, it takes a second, and they all show up. The script's not running like it's supposed to that adds the legal drive, and so I think I'm going to take a break. And I'm so sorry. I'll call our IT people right now.

HEARING OFFICER HALSTEAD: Okay. So what we're going to do, we're all going to stay -- we'll go off the record.

(Off the record.)

HEARING OFFICER HALSTEAD: We're back on the record In the Matter of Charges and Complaint Against David Kale McCleve, PA-C, case number 24-42281-1. Counsel has stated their appearance. Ms.~Zastrow indicated her client is present,

Mr. McCleve.

We're continuing this hearing via the Zoom app by consent of all parties, and this matter continues to be recorded.

We had a brief conversation before we went on the record with regard to which Ms.~Bradley is going to make a quick proffer for the record.

MS. BRADLEY: Okay. And in doing that, I intended to call Mr. Diaz for that one piece of information.

MS. ZASTROW: Certainly, she can -- I'm sorry.

HEARING OFFICER HALSTEAD: Just state it on the record. Ms.~Zastrow already said she would stipulate to your proffer.

MS. BRADLEY: So you want me just to say the fact?

HEARING OFFICER HALSTEAD: Yeah.

MS. BRADLEY: Okay. The Investigative Committee gave authority to file a formal complaint in this matter on November 14, 2024.

HEARING OFFICER HALSTEAD: Did you say November 19, 2024?

MS. BRADLEY: November 14, 2024.

HEARING OFFICER HALSTEAD: Thank you.

Ms. Zastrow, are you satisfied with that proffer?

MS. ZASTROW: I'm satisfied with the proffer. That was not my question. My question was, when did they convene? But that -- that's totally okay. It's not -- it goes to some issues later. But yes, I accept her proffer.

Thank you.

HEARING OFFICER HALSTEAD: All right. Ms.~Bradley, we're still on your case. We ended with your prior witness who was Ms. Elmquist. We ended with Ms. Elmquist.

Do you have another witness you'd like to call?

MS. BRADLEY: I would. I'm going to call Mr. McCleve and not call Ms.~Linn unless I need to after his testimony. I was trying to eliminate her testimony if I can help it.

HEARING OFFICER HALSTEAD: Mr. McCleve, can you please raise your right hand?

(The oath was administered.)

HEARING OFFICER HALSTEAD: And can you please -- and we already have your name on this as the respondent, but can you please state your name and spell your name for the record?

MR. MCCLEVE: David Kayle McCleve, K-A-Y-L-E M-C-C-L-E-V-E.

HEARING OFFICER HALSTEAD: Thank you.

Ms.~Bradley, your witness.

MS. BRADLEY: Thank you.

DIRECT EXAMINATION

BY MS. BRADLEY:

Q. Mr. McCleve, are you licensed as a physician assistant in the state of Nevada?

A. I am.

Q. For how long?

A. Now since 2014.

Q. Are you licensed anywhere else?

A. Used to be.

Q. Where?

A. Arizona.

Q. Okay. As a physician assistant?

A. Yep.

Q. Okay. What about with the Nevada Board of Osteopathic Medicine, are you licensed with them?

A. Not currently.

Q. When did that license status end with that board?

A. I don't recall. I had it -- I assumed it was a two-year revolving license. I had applied for

it, I think, in August of whatever year that was that you pulled up with Ms.~Winn, she acted as my supervising doc. I didn't realize that it was only -- I had to renew it every year.

Q. Okay. So if I told you that the Board of Osteopathic Medicine records show that your license expired on December 31, 2022, you wouldn't have a reason to dispute that?

A. Nope.

Q. Did you prepare the response that's been provided to the Board, and it's shown in Exhibit 2?

A. I did.

Q. And that was true and correct as the best of your knowledge at the time that you provided it?

A. Absolutely.

Q. If we look at the second page of that, there's a paragraph at the top, and then the second paragraph, would you read that first sentence that starts with "Prior to solidifying"?

A. "Prior to solidifying a formal written agreement with any med spa owner or Dr.~Sheep, but after acknowledgment of the appropriateness and commitment in offering the service, I was frantically contacted by med spa owner and was strongly influenced to provide service to one of her

VIP clients."

Q. Do you remember writing that sentence?

A. Of course I do.

Q. Okay. And do you recall what you meant by saying "formal written agreement with any med spa owner or Dr.~Sheep"?

A. Yeah. What I meant was, is there was no formal business contract that was actually executed.

Q. Okay. And just so we're clear, it doesn't say "business agreement" in that sentence?

A. No, absolutely, it doesn't.

Q. Okay.

A. The inference was there because Andy Sheep and I already had a signed supervising agreement on file with the Med Board.

Q. Okay. Is it -- did you prepare a record for Patient A regarding this treatment?

A. Yeah. I have -- I have notes, my notes. The med spa owner has his file in an EMR.

Q. Okay. And your testimony just now is that you have your notes. Did you provide those to the Board with regard to this investigation?

A. I did not.

Q. And why didn't you?

A. I was so focused in on the malpractice

side and the adverse reactions -- the Board included these hyper-sensationalized things that my actions cause some sort of reaction. That's what I focused on.

I had just -- I was kind of under severe duress about this. And so I, on my own volition without any counsel, went ahead and responded to the Board without counsel.

Q. Okay. Are you familiar with the document that's in Exhibit 1?

A. I am.

Q. And do you see the bottom paragraph of -- on NSBME 001? There's a sentence that says -- it starts -- well, there's a prefatory, and then it says, underlined, "Please," could you read that for us, starting with "Please provide"?

A. "Please provide a written response to each allegation noted above, as well as complete healthcare records for the aforementioned patients. Include copies of any imaging."

Q. That's -- thank you. I just wanted that first part.

So the Board asked you for records. Isn't that true?

A. They did.

Q. And you had notes?
A. I do have notes. Currently, I have notes in my phone. I have pictures of the vial, the lot number, and my mental notes of what actually transpired and how I carried out the Botox and how I administered it.
Q. And why didn't you provide that to the Board?
A. Again, in my previous answer, I said I was under duress, and I thought I was very detailed with my explanation to the Board. Had the Board rewritten me another solicitation, I would have responded with those things.
Q. Okay. So you're saying it was the Board's responsibility to ask you multiple times for the records you had in your possession?
A. Well, they asked Mr. Harris multiple times to go ahead and respond. Is that not a common courtesy? Again, I was operating on my own volition. I did not have professional counsel.
Q. Okay.
A. I was trying to be as transparent as I could, Ms.~Bradley.
Q. Okay. Let's go back to Exhibit 2. You're saying that you prepared the response without

assistance of counsel, but who did you send that response to to the Board?

A. Well, I had counsel on another matter that the Board is pursuing, and so I was already in --

Q. That wasn't my question. My question was, who did you send it to --

A. If you please let me finish, I will go ahead --

MS. ZASTROW: Your Honor, I would object to Ms.~Bradley interrupting him. He was answering the question. It's just a courtesy, Your Honor.

MS. BRADLEY: I did not --

HEARING OFFICER HALSTEAD: Okay. So from now on, I'll make that call.

Ms.~Bradley, if -- let me frame it this way. I don't think anyone particularly did anything wrong. I think that this misstep has happened throughout this hearing with witnesses and Counsel.

So if either of you, Counsel -- I'm talking to Counsel -- need a direction from me to direct the witness, then I will do that. But this interrupting of witnesses makes the record difficult, especially when we're on Zoom.

So Mr. McCleve thinks he was answering the question. Whether or not that was in response to

you or not, we still can't talk over each other. You can re-ask him after he's done speaking. And if he still doesn't respond, then you can direct me, ask me to direct him.

Are we all clear on how that's going to work?

MS. BRADLEY: Yes. Thank you.

MS. ZASTROW: Yes, Your Honor.

BY MS. BRADLEY:

Q. Mr. McCleve, looking at Exhibit 2 on the top of that email, who did you send the response to?

A. I cc'd my current lawyer, who is managing another case that the Board has brought up against me, who is Lisa Zastrow, and I made her aware of what I did. I let her know that I did that on my own volition. And I cc'd Brett Whipple because Brett Whipple is a friend of mine.

Q. That was not my question. My question was, who did you send it to?

A. I just mentioned, Lisa Zastrow and Brett Whipple.

Q. Is that your complete answer as to who you sent it to?

HEARING OFFICER HALSTEAD: Mr. McCleve, there's a "sent" line, and there's another name on

there. I believe she's trying to direct you to that.

You're referencing the --

THE WITNESS: Don Andreas. Donald Andreas.

BY MS. BRADLEY:

Q. Next question was going to be, why did you send it to Mr. Whipple? I think you answered it, but could you answer it in response to my question?

A. Because Mr. Whipple is a lawyer, and he is a friend of mine.

Q. And why did you send it to Ms.~Zastrow?

A. Because Ms.~Zastrow was providing legal counsel in another case that the Board has brought against me.

Q. Okay. But your testimony is they did not help you prepare this response. You just sent it to them as a cc?

A. Correct.

Q. You just testified that you had a supervision agreement with Dr.~Sheep at the time these services were provided. Correct?

A. Correct.

Q. Okay. And I believe the record also shows that you had a supervision agreement on file with

Dr. Harris. Is that correct?

A. Correct.

Q. Do you recall completing your supervision agreement with those physicians?

A. I don't recall the particular details, but I know that it was done because it was filed with the Board.

Q. Sure.

Do you recall -- if I told you that the form had to be notarized as to its accuracy, would you have any reason to disagree with me?

A. No. The only way that it actually gets accepted by the Board is it has to be notarized.

Q. And part of the reason for the notary is to -- would you agree with me? -- ensure that the information contained in the supervision agreement is correct.

A. Correct.

Q. And sworn under oath?

A. Correct.

Q. So everything you would put into the supervision agreement would be true and accurate. Is that true?

A. I mean, I'm not sure what you mean. We fill it out according to what the -- what -- what is

asked on the actual thing.

Q. My question is, really, simply -- and maybe I should just rephrase.

Everything that you provided, like, wrote down in the supervision agreement form would have been true at the time you signed it. Is that correct?

A. Sure. At the time, Andy Sheep assumed supervising role, yeah, absolutely.

Q. Are you aware that the supervision agreement includes a location where the services will be provided?

A. Yep, I am.

Q. And do you know the location that was provided for your supervision agreement with Dr. Sheep?

A. Again, this was a new business venture and there wasn't an established med spa or -- or address, so there was nothing to provide just yet. It was all in creation.

Q. Okay. Wait.

A. We were looking for -- we were working with different med spa, and once we solidified, then we would have sent in an address.

Q. Okay. Because your testimony was that

Dr.~Sheep was supervising you while you were at North Vista Hospital providing --

A. No.

Q. -- services.

A. No, no. No, that was not my testimony.

Q. Okay. So what is your testimony regarding --

A. Dr. Sheep was not my supervising doc at North Vista. No, he was not.

Q. When you provided services to Patient A, who was your supervising physician?

A. So under the Botox venture that I was forming with Dr.~Sheep, Dr.~Sheep was acting as a supervising doc for that boutique-type of medicine.

Q. So is your testimony that Dr.~Sheep authorized you to perform Botox at that time?

A. Yeah. Absolutely.

Q. Okay. And it's your testimony that he authorized you to perform Botox on Patient A at North Vista Hospital on April 8, 2023?

A. No. No.

Q. Okay. So who authorized you to provide Botox services to Patient A on April 8, 2023?

A. Dr. Sheep allowed me to operate underneath his license, underneath his supervision, according

to his scope of practice, what he felt comfortable allowing me to do. And he said that I could provide Botox to patients of med spas.

Q. Any patient of any med spa anywhere?

A. Yep.

Q. Is that in the supervision agreement?

A. Again -- did you read my response?

Q. I did read your response many times.

A. Okay. So then basically I formulated a nontraditional -- we were formulating a nontraditional business model where we go into med spas and we provide medical care.

Q. Okay.

A. And yes, I was authorized to provide medicine -- medical care at North Vista Hospital.

Q. Okay. That's not my question, Mr. McCleve. My question is, who authorized you to perform Botox services on a patient at the North Vista Hospital location?

A. And I just answered to you.

Q. You didn't. You said that --

A. Yes, I did. Yes, I did. I said the med spa, boutique clients, I was authorized to operate -- to -- to do procedures on them under the supervision of Dr.~Sheep.

Q. And that practice location was listed on your supervision agreement at the time you provided the services to Patient A?

A. Again, no, North Vista was not located -- not -- not included under the supervision of Dr.~Sheep -- or the -- the address was not included on that supervising agreement with Dr.~Sheep.

Q. So again -- I'm sorry, I'm -- your testimony has been that Dr. Harris -- at least I think your testimony was -- Dr. Harris was your supervisor for emergency medicine services at North Vista. Is that correct?

A. The signed -- the signed supervising agreement in order for me to work at North Vista was with Dr. Harris.

The day of the incident, my actual supervising doc by proxy was Dr. Clark.

Q. So Dr. Harris was supervising because -- all right. Are you aware that you can have different supervising physicians for different kinds of practice?

A. Yeah, absolutely. In fact, you submitted an exhibit where it listed all of my different supervising docs at different times in my life. So, yeah, I'm well aware.

Q. Okay. And you're aware that some supervisors may supervise you at one location to provide a certain type of service, and a different supervising physician may supervise you at a different location to provide a different type of service?

A. Correct.

Q. Okay. And if you had a supervising agreement with -- for example, let's just use Dr.~Sheep. You have a supervising agreement on file with Dr.~Sheep to perform cosmetic services. Is that true?

A. Correct.

Q. Okay. And you had a supervising agreement on file with Dr. Harris to perform emergency medicine services. Is that true?

A. I'm sorry. Say it again.

Q. You also had a supervising agreement on file with Dr. Harris to perform emergency medicine services at North Vista Hospital. Is that correct?

A. Correct.

Q. Okay. And the services you provided to Patient A in this case, what kind of services were those?

A. Paralytic injection, botulism type A.

Q. Is that an emergency medicine service?
A. No, it was not.
Q. What kind of service is it?
A. Is a cosmetic service.
Q. So at the time that this occurred, April 8, 2023, your testimony is that Dr.~Sheep was service -- supervising your provision of cosmetic services. Is that correct?
A. Correct.
Q. And his supervision extended to things that you may do at North Vista Hospital if they were cosmetic. Is that correct?
A. No. That's not my testimony.
Q. So who is supervising you providing cosmetic services at North Vista Hospital?
A. I'm sorry, Ms.~Bradley. Are you inferring that just because I walk into several different buildings --
HEARING OFFICER HALSTEAD: All right. Okay, Mr. McCleve, I want you to -- I want you to consider this in a different way for me.
You're a fact witness at this point. I get that you're the respondent. It helps me when you just answer the questions. I can't have you arguing with Counsel. She's trying to make a point,

and what will happen is, is your counsel will then get to question you and clarify anything you want to clarify.

So if you could approach this -- it's just, at this point, you're just answering the questions as factually and honestly and easily as you can, we can get through this much quicker, and it will help me get the information I need.

And anything that you feel is being unfairly characterized, you can certainly respond to, but you have to answer the question, and Ms. Zastrow will follow up with you to kind of dot those I's and cross those T's.

So Ms.~Bradley, can you please re-ask your question?

BY MS. BRADLEY:

Q. I'm sorry, I'm trying to remember what my question was.

HEARING OFFICER HALSTEAD: Your question was whether it was his testimony that the time he treated Patient A, he was being supervised by -- for purposes of the supervision agreement, by Dr.~Sheep. I believe that was your question.

MS. BRADLEY: Yeah. And I think I also added the location. Because my question was, when

he provided the cosmetic service at North Vista Hospital, who was acting as a supervisor in that moment?

THE WITNESS: Dr.~Sheep was my supervising doc for any cosmetic procedure that I did.

BY MS. BRADLEY:

Q. And that's what your supervision agreement with Dr.~Sheep says?

A. Yep.

Q. Supervising any cosmetic service?

A. Yep.

Q. Okay. Are you aware that there's locations listed for practice in the supervising agreement form?

A. I am.

Q. And was North Vista Hospital listed as a location that you could provide cosmetic services under Dr.~Sheep's supervision?

A. It was not.

Q. So that location was not one Dr.~Sheep had approved for you to provide cosmetic services on, but your testimony is still that he was supervising you on that day, in that moment when you provided services to Patient A?

A. He was supervising me as I was doing a

cosmetic service.

THE WITNESS: And I'd like to say, Ms.~Halstead, I apologize. You know, three years of angst and stress and what have you --

MS. BRADLEY: I'm going to --

THE WITNESS: -- I don't mean to -- to be disrespectful. I'll try and answer the questions directly, yes.

MS. BRADLEY: I'm going to ask you not to make statements that are not answering questions that were asked.

HEARING OFFICER HALSTEAD: There's no need to apologize. I just want to make a clear record, and I think that we can start from this point and do a better job of it.

THE WITNESS: Absolutely.

BY MS. BRADLEY:

Q. And when you complete a supervising agreement with a physician and you submit that to the Board, if I told you that that agreement says that you have read and are aware of the provisions of Chapter 630 of the Nevada Revised Statutes, which is the NRS provisions, the law concerning the duties of a supervising physician, and you've also read Chapter 630 of the Nevada Administrative Code, which

is the regulations adopted by the Board concerning a physician's relationship with a physician assistant, and that's part of the certification you give in the form. With that, would you have a reason to disagree with me on that?

MS. ZASTROW: Before you respond, Kayle, I'm going to interject an objection.

Ms. Bradley appears to be reading from the supervising agreement that the Board chose not to introduce as an exhibit in this case, and you can -- I don't know why they wouldn't, but she's asking him questions in a vacuum.

He can respond to his recollection, Ms.~Halstead, if you order him to. I understand that. But the best evidence of what the supervising agreement says is the supervising agreement. The Board doesn't want to put that in front of you. They could have. They did not.

HEARING OFFICER HALSTEAD: Ms.~Bradley, go ahead and ask your question. It was a long question. I don't know what --

MS. BRADLEY: And I'm sorry.

HEARING OFFICER HALSTEAD: -- you're reading from, but you can --

MS. BRADLEY: I am looking at the

agreement. It's a public document and available on our website. All I wanted to clarify was that if he remembered or -- well, first of all --

BY MS. BRADLEY:

Q. Mr. McCleve, do you remember that part of completing that supervision agreement included attesting to the fact that you have read the Nevada Revised Statute, NRS 630, and NAC 630 with regard to supervision of a physician assistant and your duties that you're authorized to perform under supervision?

A. I don't recall it by detail, no.

Q. Okay. But if I told you that was a part of the form, would you have a reason to disagree with me?

A. I wouldn't.

Q. Okay. And as a licensee, just in general, would you agree with me that it's probably your duty to make sure you're familiar with the laws, which is NRS 630, and the regulations, NAC 630, that would govern your practice?

A. I -- I would agree.

Might I add in that too, you know, I would agree with that, but I would also agree that the inference of a supervising agreement is to have a supervisor go ahead and and guide and dictate my

ability to provide care. So what he tells me, the onus is on him to tell me what is -- you know, I can do and what I can't do.

Q. And so your testimony is that Dr.~Sheep told you you could practice in any location providing cosmetic services. Is that correct?

A. My supervising doc, Dr.~Sheep at the time, said that I could provide cosmetic services.

Q. Okay. But did he limit that to a location or a setting?

A. He did not limit that to a location.

Q. Are you aware that when you provide services, your supervising physician must be available to consult with you by phone while you're providing those services?

A. Yep, I am.

Q. And if they're not available, is there a requirement that a backup person be designated to be available to consult with you?

A. I don't know if there's supposed to be a backup person. I mean, I would -- I -- if I was working like Ms. Elmquist in an emergency department, which I've done, and my supervising doctor was sleeping, you know, I -- I guess. I mean, I don't know.

Q. Let me look up -- because there's a provision on that, and I just want to ask you about it.

Are you familiar, Mr. McCleve, with NAC 630.370?

A. I am not well-versed in it, no.

Q. That regulation has to do with supervision of a physician assistant by a supervising physician.

A. Okay.

Q. And there are duties in there, primarily for a supervising physician, but I think it also affects a physician assistant.

So you're saying you're not super familiar with this provision?

A. I'm -- no. Not by memory, no.

Q. Okay.

MS. ZASTROW: Your Honor, I would ask that she provide that reference again because I'm not --

MS. BRADLEY: Oh, I'm glad to.

MS. ZASTROW: I'm not reading what she's saying.

MS. BRADLEY: Okay. I'm looking at NAC 630.370. The title given by the Legislative Counsel Bureau is "Supervising Physician Duties," and then there's a colon "qualifications." And I was

intending to ask Mr. McCleve about subsection 2. And this talks about --

MS. ZASTROW: I understand. I did read it correctly, it says "Supervising Physician Duties," not physician's assistant duties.

MS. BRADLEY: Correct. It does say "supervising physician," yes.

BY MS. BRADLEY:

Q. Mr. McCleve, I'm going to read to you subsection 2 of that provision. Is that okay?

A. Sure.

Q. It says "Except as otherwise required in subsection 3 or 4," 3 has to do with the part of the month meeting that you have with your supervisor as a physician assistant. Does that sound familiar to you, that once-a-month meeting?

A. Yep.

Q. Okay. And you have those with your supervisors on file with the Board. Is that true?

A. Are you saying did I file the minutes of each one?

Q. No, no, no. Sorry.

A. Because most of these -- most of those supervisions are just -- you know, those -- those interactions are just verbal. We don't record them

and we don't file them with the Board.

Q. No. And you don't have to.

A. Is that what you're inferring?

Q. No, no. No, not at all. My question -- I want to talk about subsection 2 there, but subsection 2 also refers to 3 and 4.

And so 3 has to do with that meeting once a month with your supervisor, and I just wanted to ask you if you were familiar with that. I was guessing you are, because I'm guessing you have those every month. Is that true?

A. Correct.

Q. Yeah. No, there's no requirement to file it with the Board unless the Board asks for it in some -- some reason.

It sounds like you're familiar with the requirement that you meet with your supervising physician at least once a month. Is that true?

A. There's ongoing communication throughout the entire month.

Q. Perfect.

A. It doesn't -- it doesn't occur just once a month.

Q. Perfect. Okay. That's perfect. Thank you.

And then subsection 4 does talk about what I asked you about a minute ago, which is the fact that if the supervising physician is not able to be there for you while you're providing services, there should be a backup person, sounds like.

A. Okay.

Q. But the part I really wanted to ask about comes next. So it says:

"The supervising physician shall review an initial selected charts of the patients of the physician assistant."

Do you recall doing that with your supervisor?

A. This was our first Botox patient.

Q. Okay. Well, according to the Board's records, though, your association with Dr.~Sheep was March 16, 2021. Is that not accurate?

A. Sure, that's accurate. If you want to go ahead and look at My Shape Lipo's records, Mr. Sheep frequented, more than once a month, to My Shape Lipo and absolutely signed off on charts.

Q. All I was asking about is if you're -- if you recall and are aware that your supervising physician reviews and initial selected charts. It can be yes or no.

A. Yes.
Q. Okay.
A. He did.
Q. And then the next part of subsection 2, and I'm going to read this -- this -- these next two sentences, "Unless the physician assistant is performing medical services pursuant to NAC 630.375" -- and I will tell you, that has to do with in an emergency. Right? In an emergency, you can do what's necessary on an accident scene. Right?
A. Okay.
Q. -- "unless you're doing an emergency, the supervising physician must be available at all times that his or her physician assistant is performing medical services to consult with his or her assistant. Those consultations may be indirect, including, without limitation, by telephone."
A. Well, that's awesome, because I actually have Andy Sheep's number, Dr.~Sheep's number. I have his personal cell, and we speak frequently. So yeah, it takes place all the time.
Q. Okay. And so on April 8, 2023, he was available for you to call and consult regarding the services you were performing on Patient A?
A. Had I needed him, yes, he would have been.

Q. And he was aware you were providing services on that day. Is that -- is that correct?
A. Correct.
Q. Okay.
A. It was a longstanding agreement that I was providing cosmetic services underneath his supervision. Whether it took place on a Sunday afternoon, whether it took place on a Monday morning, he knew. That was the agreement.
Q. And and if he went out of town on an extended period, you would still be able to call him?
A. Absolutely.
MS. BRADLEY: So I just want to look at my notes here really quick.
BY MS. BRADLEY:
Q. Do you know Dr.~Sheep's qualifications? Like, is he board-certified, do you know?
A. He is board-certified in emergency medicine.
Q. Okay.
A. I also know that he has other certifications and has gone through other outside training, of which there is not a residency given or performed, only certificates and training. And I --

I operated underneath his guidance according to what he stated he was competent in doing.

Q. Do you have an idea what those other certifications are? Like, are you referring to Botox injections or --

A. I did not confirm. The onus is not on me to confirm that he had a Botox certification. I don't think there is a Botox certification.

Q. I just was trying to understand what other things you were referring to, if you knew.

So you know that he's board-certified in the emergency medicine, and that's the only thing you really definitively know. And that's fine. I just wanted to clarify.

MS. ZASTROW: Objection. That misstates his testimony. He said he had other certifications and was starting to answer.

MS. BRADLEY: Okay. I apologize. I'll withdraw that statement.

BY MS. BRADLEY:

Q. Mr. McCleve, what other certifications does Dr.~Sheep have, if you know?

A. Well, I know he has a certification in tumescent liposuction that was invented by a dermatologist in California. I know specifically --

that's why he was our supervising doc. That's how he became my supervising doc in the esthetic region.

Q. So he has a certification in tumescent liposuction. Okay.

And is that from -- is that from -- like, is that a board-certification?

A. No, it's not a board-certification. It's a certificate that he went through a training course.

Q. Okay.

A. And if you look at the recent literature, there's some articles in the American Cosmetic Surgery Journals that were written by different specialists that say those certifications are absolutely valid.

Q. Are you aware of any other certificates that Dr. Bowman had -- or, I'm sorry, Dr.~Sheep -- excuse me --

A. Dr. Bowman?

Q. No, I'm sorry, Dr.~Sheep. I missed --

A. Dr. Bowman's part of the --

Q. I'm withdrawing the question. I used the wrong name, and I'm sorry.

A. Wow. Okay.

Q. Are you aware of any other certifications

that Dr.~Sheep had?

A. Being an emergency medicine doctor -- I can't confirm this because I haven't seen his actual certificates, but being an emergency medicine doctor, I would assume he probably has to have acute trauma life-saving course, which means he went through a course to treat active traumas, car wrecks, you know, surgical issues.

He probably has pediatric acute life-saving certificate. He probably has normal ACLS, which is acute cardiac life-saving certificate.

What else might he have? I mean, I know he has those four things in particular.

Q. What about you, what training do you have? I believe you went to PA school, so let's start there. You went to school to be a physician assistant. Is that correct?

A. I did.

Q. Where did you go to school?

A. At Massachusetts College of Pharmacy and Health Sciences University in New England.

Q. Okay. And how long was your program?

A. Mine was an accelerated program. It was a 24-month program, but typically there are about

three years. It's a master's program.

Q. What about your undergraduate studies? What did you study there?

A. Latin American studies at the University of Arizona with a chemistry minor.

Q. After you received your degree as a physician assistant from that physician assistant program, what other training and certificates did you obtain?

A. Let's see. I worked in emergency medicine. I worked in dermatology. I worked in liposuction. I worked in -- I've worked in -- I'm now currently an ortho spine, orthopedic spine surgery and pain management. Yeah. Yeah.

Q. Okay. But you -- at one time at least, and I think you still are certified by the NCCPA?

A. Yeah. So my current certifications are, you know, NCCPA, the ATL -- I have ATLS, acute trauma life-saving certificate. I can take care of people that, you know, have active trauma. I have a pediatric acute life-saving certificate. I have a basic life-saving certificate. And I have acute cardiac life-saving certificate.

Q. Okay.

A. I also have certificates in OSHA training

and HIPAA training.

Q. So it sounds like the trainings that you just mentioned, maybe aside from OSHA, those are all probably related to your provision of services as an emergency room physician assistant?

A. Actually, you know, HIPAA is also part of the -- I'm sorry, the -- the OSHA is also part of the, you know, medical training. It's not just specific to -- to emergency medicine training.

Q. No, I said "aside from OSHA."

A. Okay.

Q. Because the three that you listed, I wrote ATLS, ped LS, and acute LS, and that was just me writing quickly what you said, I thought. So it sounds to me like --

A. PALS, pediatric acute life savings, basic life savings, and acute cardiac life savings, those are certificates that are not unique to -- to emergency medicine.

Most of the medical providers that work at a facility will need to get at least BLS and ACLS, maybe not PLS, and definitely not ATLS. But most medical providers will need to have BLS and ACLS.

Q. And then what about the OSHA training, what's that about?

A. That's just basic OSHA training that, you know, talks about, you know, safe work habits, how to report, you know, chemical spills, how to report, you know, work injuries, that type of stuff.

Q. Okay. So it sounds like that one would apply to probably a lot of people as well --

A. Absolutely.

Q. -- because everyone needs to have that safe work environment?

A. Yep.

Q. Okay. And then I think you said you're certified in some way regarding HIPAA?

A. So I've gone through HIPAA classes. Absolutely.

Q. Okay. All right.

A. I also have certification in tumescent liposuction.

Q. Okay. And who's that from?

A. I don't recall. I would have to look at the actual certificate.

I've done training with a cosmetic surgeon. I've done training with other doctors that had provided the service. We follow the Henry Klein model, who was a dermatologist out of California. I have Henry Klein's books. I've studied Henry Klein.

Q. Okay.
A. You were asking me about my certifications.
Q. Yeah. Thank you. That's fine.
Are you familiar with NRS 630.271? It's -- it says "Authorized Services."
A. Not by memory.
Q. I'll read the first part to you. So subsection 1 says:
"A physician assistant may perform such medical services as the physician assistant is authorized to perform by his or her supervising physician. Such services may include ordering home health care for a patient."
Does that sound familiar at all?
A. Sure.
Q. So even though you have training, for example, in -- I'm going to just use dermatology.
A. Okay.
Q. Okay. Are you supervised by a dermatologist right now?
A. I am not.
Q. And so even if you're trained to perform dermatology services, do you think you'd be able to perform dermatology services today?

A. No. I would only be able to perform services on that particular patient according to what my supervising doctor allows me to.

Q. Okay.

A. If you're -- if you're wondering what type of classification or certification Andy Sheep has, you probably should have invited him here to be a witness.

Q. I'm not asking you about Dr.~Sheep, in fact.

My question was, I was just looking at your experience, and you said that you were trained in dermatology. And I have no reason to dispute that. And my question was today, could you perform dermatology services?

A. If my supervising doctor told me that I could perform whatever medical care in that particular setting, I could absolutely do it.

In fact, let me just give you -- let me give you an instance. I now work in ortho spine. I have several doctors that I am currently supervised by.

Q. Okay.

A. The patient that I worked on the other day had a festering suture that was internal. It was

working its way up to the skin.

Q. Okay.

A. Now, the ortho spine doctor, that might not -- he might not think that that is, you know, something that he wants to mess with, but it was bothering a patient, and I intervened on it.

Did I need to call him and ask him if it was okay to -- to address that, or did that, like, fall in the scope because he's a general surgeon? I don't know.

I guess what I'm saying is, like, you know, does -- does my capabilities change as I enter different buildings? I don't know. I -- I just -- I do what my supervising doctor tells me I can do.

Q. And so your doctor told you in that instance to take that action?

A. Yeah. Absolutely.

Q. Okay. But you testified that the surgeon may or not may not have done it, him or herself?

A. Yeah. He may or may not have done it, but he allowed me to do it. He told me that I could do it, absolutely.

Q. Okay. So it was an authorized service, it sounds like?

A. Yep. Absolutely.

Q. If you had a supervising physician authorize you to perform something that you don't have training in, would you be able to do that service?

A. I like to think of myself as a good practitioner, one that is responsible. So if I feel like I am confident and then I could perform that service, then -- and my supervising doc absolutely says I can, then I will go ahead and engage it.

If I feel that it's outside of my scope of practice, then I absolutely will not.

Q. So there could be an instance where your supervisor authorizes you to perform a service, they say, oh yeah, go ahead and do this, Mr. McCleve, and you say, I don't think I can do that because it's outside my scope. Is that fair?

A. Outside of my capabilities, not outside of my scope. My scope is defined by what my doctor says I can do.

Q. Well --

A. So that's the scope. Correct?

Q. No.

A. Now my first -- no, no, no, no. What my personal capabilities are are one thing, but what my scope is, is what my doctor allows, because, you

know, medicine is continuously evolving and we are continuously learning.

So just because I don't know a skill right now doesn't mean that I won't learn it in the future.

Q. Okay.

A. So that does not define my scope. My scope is whatever my doc says I can do.

Q. Hmm.

A. I mean, you are aware that physician assistants do not do residencies, we don't have scopes in particular? Ms.~Elmquist could go into cosmetics and learn cosmetics. She's not limited to emergency medicine. As am I. I could go into another field and I could learn that. We do not have residency.

Our scope is defined by the supervising doc.

Q. I'm very aware that you don't have residency. And I didn't have a question posed, but thank you for that additional comment.

If I told you that there was a regulation that was recently adopted, it's R177-22, and that stands for -- that's just the number that the Legislative Council Bureau gives. There is a

reference in that provision to the scope of practice of a physician assistant.

MS. ZASTROW: Your Honor, I object. I have no idea what she's talking about. We don't know when this regulation was put in place.

This incident occurred over three years ago. It was Ms.~Bradley herself that read NRS 63271 that says that a PA can perform medical services as the physician is authorized to perform by his supervising physician. That's the statute she read. That was the statute in place at the time.

I don't know anything about the new reg. It's not in the Complaint.

HEARING OFFICER HALSTEAD: She just asked him if he was aware of it, so I don't know where she's going with this.

MS. ZASTROW: Okay.

HEARING OFFICER HALSTEAD: She asked him if he was aware of it.

Go ahead, Ms.~Bradley.

BY MS. BRADLEY:

Q. So my question still stands, Mr. McCleve, have you reviewed that regulation at all?

A. I have not.

Q. Okay.

A. When did it get put in place?
Q. I believe it was put in place after this. And I wasn't really asking as if it applied to this case.
My question was just that it says "scope of practice of the physician assistant," and I wanted to ask you about that phrase, but I'll withdraw and move on.
MS. BRADLEY: I apologize, I would like a second to try to find a specific regulation.
THE WITNESS: I mean, I can probably save you time. Like, I am -- I provide medical care. I don't -- I don't --
MS. BRADLEY: I didn't ask a question.
HEARING OFFICER HALSTEAD: Mr. McCleve, I know the process is frustrating, but she just -- you just get to answer questions.
THE WITNESS: Okay.
HEARING OFFICER HALSTEAD: Any argument or any statements, again, will be followed up by your counsel.
BY MS. BRADLEY:
Q. Mr. McCleve, are you familiar with Nevada Administrative Code NAC 630.360?
A. Not by memory.

Q. I'm going to go ahead and read the first part of that to you. So the title of this says "Performance of Authorized Medical Services, Identification, Misrepresentation, and the Notification of Change Regarding Supervising Physician."

MS. ZASTROW: I apologize. Ms. Bradley, could you give the citation again?

MS. BRADLEY: It's Nevada Administrative Code 630.360.

And just for the record, this provision has been updated after the date of the incident in this case. I'm going to refer to the prior version. I just don't want anyone to be confused.

Right now, the new additions are not actually codified, so if you do look it up online, you're going to see the older version, and that is what I'm going to refer to.

MS. ZASTROW: And you said NAC 360 --

MS. BRADLEY: Point 360. Do you have that, Ms. Zastrow?

MS. ZASTROW: Yeah. It was -- I was comparing the Complaint and -- I have that statute, yeah.

MS. BRADLEY: Okay. Thank you.

BY MS. BRADLEY:

Q. So, Mr. McCleve, I'm going to go ahead and read the first part of that for you. It says:

"The medical services which a physician assistant is authorized to perform must be" -- and then there's a colon, it says "A, commensurate with the education, training, experience, and level of competence of the physician assistant."

A. Okay.

Q. We've talked a lot about the statute that says you can perform authorized services. But if we read this regulation, it sounds like you can't perform anything that they authorize you to do; those services must be commensurate with the education, training, experience, and level of competence of the physician assistant. Would you agree with me?

A. Well, I don't have the statute in front of me, but sure.

Q. And then it also says -- so it says that in the first part, and then it says:

"And within the scope of the practice of the supervising physician of the physician assistant."

A. Okay.

Q. So --
A. So there's two components there.
Q. Yes. That's what I'm trying to get at. But the statute says you can perform authorized services. And the regulation, it says, well, the things that you're authorized to perform have to be a part of things that you're educated and trained for and have experience on, and it has to be within the scope of the supervisor that's telling you to do that.
A. Actually, I think I do remember that. There was an email that I sent inquiring about Botox, and I think you responded to it. I think it's Exhibit 10 where you copied and pasted several of those laws. I think that's involved in it, yeah.
Q. I did. We haven't actually admitted that. We did produce it as a possible exhibit in this case.

But sounds like you're familiar with that. So it's not as simple as they can offer as anything; there are some caveats to what they may authorize. Is that fair?
A. Yeah. I think the spirit is, is going at, you know, they're trying to make sure that the most appropriate medical care is given. Correct?

Q. Yes.
A. Okay.
Q. Let's look at the allegations in the Complaint because I want to ask you about them.
So we've alleged -- Count I, is malpractice, and we alleged -- and, of course, there's a definition of that in the regulations, that's the administrative code, that says:
"Malpractice is the failure to treat a patient with reasonable care, skill, or knowledge ordinarily used under similar circumstances."
And I should note for the record that the definition was amended -- because right now, it says "physician," but it's actually amended to include all of the Board's license types. It's just not codified. So there's actually a typo and how that's written in the Complaint.
MS. ZASTROW: There wasn't --
MS. BRADLEY: Excuse me?
MS. ZASTROW: I would just object to the extent of you haven't said when it was amended to include physician's assistant.
MS. BRADLEY: I will tell you the date right now.
MS. ZASTROW: My understanding is after

the Complaint was filed.

MS. BRADLEY: I will double-check that. But I believe it was prior. I just have to -- I'm sorry, I have to go down to that.

Yeah, it looks like the first revision was done June 2, 2023, that's when it was approved by the Legislative Commission. So the incident had happened. The Complaint had not been filed.

But as a practical matter -- I mean, we can argue about it -- this is the definition that the Board uses regarding malpractice.

BY MS. BRADLEY:

Q. Are you familiar with that definition, Mr. McCleve, reasonable care, skill, or knowledge ordinarily used under similar circumstances?

A. You just read, if that's the definition, yes, I am now.

Q. Okay. And is it your testimony that the treatment you provided to Patient A involved the use of reasonable care by you?

A. Correct.

Q. And reasonable skill by you?

A. Correct?

Q. And knowledge ordinarily used under similar circumstances?

A. Correct.
Q. Okay. But would it be normal -- a normal occurrence to invite a patient that's not registered at the hospital to come to the hospital to receive cosmetic injections at the hospital?
A. No, that's not normal.
Q. So it's not a normal thing, but it's still a reasonable thing to do?
A. Well, the actual carrying out of the medical procedure was done with them with reasonable care under those -- whatever expectations and circumstances.
The location was different, and that's all that's changed here. Correct?
Q. Well, I just --
A. I mean, it was med spa versus hospital; correct? I mean, it's just a location thing.
Q. It definitely is a location thing.
But I just wanted to know if it was -- it was a reasonable thing to bring someone to the hospital facility while you're on shift and inject them with cosmetic injections?
A. So that was against hospital policy. Absolutely.
Q. Okay. But from a malpractice standpoint

or an ethical standpoint, is that reasonable to you to do?

A. I mean, you're asking -- I -- I'm sorry, what are you -- exactly what are you asking?

Q. I wanted to know, from a malpractice perspective, at least your understanding of malpractice, do you think that's reasonable to do?

A. Well, personally, I don't believe it's malpractice, so --

Q. Okay. So then your answer is no, you -- or, I'm sorry, you do think it's reasonable to bring someone to the hospital and perform cosmetic injections on them and you don't think that constitutes malpractice. Is that fair?

MS. ZASTROW: Objection. Compound. And that misstates his testimony.

MS. BRADLEY: Okay. I'm sorry, I'm trying to summarize what he's saying.

HEARING OFFICER HALSTEAD: Stop. She's asking him if she thinks that's a fair characterization, and he can either agree or not agree.

MS. ZASTROW: Understood. It's compound because she's asking about ethics and malpractice in the same sentence.

HEARING OFFICER HALSTEAD: I found it a reasonable question.

Go ahead, Ms.~Bradley.

BY MS. BRADLEY:

Q. Mr. McCleve, is it fair to say that your testimony today is that bringing in a third party that's not registered at the hospital to the hospital to perform cosmetic injections on that patient is a reasonable thing to do?

A. It is my testimony that it violated hospital policy, and I knowingly did so.

Q. Okay. My question is not about hospital policy. I want to know -- aside from hospital policy, let's pretend hospital policy doesn't exist, is it your testimony -- I mean, I guess, what is your testimony regarding whether it's reasonable care, skill, or knowledge to bring an outside person or invite them to the hospital to receive cosmetic injection?

A. Reasonable skill, care, or knowledge, I absolutely believe that my medical care met that standard.

Q. And it doesn't matter if this patient isn't a registered patient of the hospital, in your opinion?

A. I -- no, I didn't say that. No.
Q. Well, okay, I'm asking you that -- because that's why I'm asking if this is reasonable. I get that you believe your care was done appropriately. I'm not disputing that.
A. Okay.
Q. My question to you is whether or not you think bringing someone to the hospital, just the act of inviting someone to come to the hospital to receive cosmetic injections at the hospital, the hospital doesn't know they're there, they're not a registered patient, and you're providing a medical service on them.
Do you think that's a part of reasonable care?
A. I -- I guess I'm having a hard time differentiating. I mean, I really do. I -- you know, again, it was not appropriate to bring him onto the hospital.
Q. Okay. And the only reason you think it was not appropriate is hospital policy. Is that -- is that true?
A. Correct.
Q. Okay. But aside from hospital policy, if it didn't exist, you think it's reasonable care to

bring an unregistered patient to the hospital to receive cosmetic injections. Is that true?

A. Yeah. It is my testimony that I believe you can perform the service in various different settings. So if we're excluding the hospital policy aspect of it, I could probably do this at your home. Or you could -- I could do it at my own.

Now, there's a law against doing it in -- in -- in a hotel room, absolutely. But the actual delivery of the medication and the -- and the procedure, absolutely, I met the reasonable skill, care, and knowledge.

Q. So is it your testimony that you're trained on the provision of Botox?

A. Yes.

Q. Okay. And you're aware of the appropriate locations where Botox can be provided?

A. So I am aware that it is usually done --

Q. The question is yes or no.

A. -- in a facility.

Nope. I don't know all of the locations by definition, no.

Q. But if you're providing a service, wouldn't it be appropriate for you to know the appropriate locations where you can provide that

service?

A. Absolutely.

Q. So have you read the law regarding where you can provide service -- Botox services?

A. It's never really come up. It's always been done in an office setting, so I've never really had to, like, you know, research.

Q. Okay. Because you just said you could do it in my home or your home, is that not --

A. I'm just saying -- I'm saying the actual delivery of the medication can be done, like, physically, it can be, you know, you could do it in various settings.

Q. Okay. But is it lawful to do it anywhere?

A. I don't know. I haven't read -- I haven't researched the law. I haven't -- but most -- most of the time that I do it, it's in an office setting.

Q. Most of the time?

A. I mean, I shoot myself up at my house, yeah. So I do -- so I do Botox to myself at my house. So that is not an office setting.

Q. Okay.

A. I don't run to the office to shoot myself up with Botox.

Q. Do you do your Botox with other people in

a setting that's a home or residence?
A. With my wife? Yep. Absolutely. Nobody that's outside of my wife and myself, though.
Q. Okay. But -- and is Botox a service you regularly perform with patients?
A. When I was working in derm, I did Botox, probably, daily.
Q. Okay. But throughout your career?
A. Now I do it intermittently.
Q. But I think your testimony was that you were engaging in a side hustle, at least at some time, aside from your emergency room physician assistant duties. Is that fair?
A. Starting to engage? Yes. Starting to create a side hustle? Yes.
Q. Okay. So in 2023, you were only starting to engage in a side hustle?
A. Correct.
Q. And you had not provided Botox services prior to that?
A. No -- I just told you I worked in dermatology, so I provided Botox services in various settings --
Q. Okay.
A. -- in various dermatologic offices.

Q. How long have you worked -- how long prior to this had you worked at North Vista Hospital?
A. I think I've been at -- I was at North Vista Hospital probably 2017-ish, maybe.
Q. Okay. And then this happened in 2023?
A. Yep.
Q. So from 2017 to 2023, were you working in dermatology?
A. No, I was not working in dermatology. I think I finished dermatology -- let me look -- in February 2017.
Q. So after February 2017 until April 8, 2023, you were providing emergency room physician assistant services at North Vista Hospital. Is that true?
A. Correct.
Q. Were you also regularly performing Botox during that time?
A. Only to myself and my wife.
Q. And so this patient was the first patient outside you and your wife that you had provided Botox services on?
A. Correct.
Q. Well, just because earlier you mentioned homes and I just want to make sure you're aware, if

you choose to perform Botox services in the future, are you familiar with NRS 629.086?

A. Not by definition, no.

Q. That talks about conditions and limitations on injection of dermal or soft tissue fillers. And it specifically prohibits the provision of these fillers at a location other than a medical facility or the office of a physician or physician assistant licensed pursuant to -- and then it says "630" or "633." It also talks about dentist, advanced practice registered nurse, and podiatric physicians.

So based on that, do you think you could provide Botox services at a location that's a residence?

A. If I have a home office, absolutely, that -- that's -- that's deemed medical, then I -- then I could, absolutely, if it was attached to my home.

But no, as far as like a normal patient, no, I would not do it inside a home.

Q. I just want to make sure we are clear that, like, Botox parties that people may do in their homes are not legal.

A. And I'm well aware of those. Absolutely.

Right.

Q. And --

A. And can I ask, I mean, can I continue to do it to myself in my own home?

Q. I can't opine on that. I didn't know until today that you were doing that in your home. And that's not a part of the Complaint.

A. Hmm.

Q. I just -- I was concerned when you talked about providing them, perhaps, in a home, and I was concerned that you were routinely providing these and --

A. No, that was -- just that was just to go ahead and further illustrate that the delivery of medication met the standard according to my skill set, my knowledge, and my delivery. I was just illustrating, depending on -- I mean, it doesn't really matter the setting. Right? I can still provide good medical care according to my skill, knowledge, and whatever you said --

Q. Okay.

A. -- in different -- in different settings.

Q. So I think, then, is it fair to say your testimony says -- your testimony is as long as the care is good, it doesn't matter the location for

purposes of malpractice?

A. No, I didn't say that. I didn't say that. I said --

Q. What did you say?

A. -- you can still deliver good medical care, the setting -- despite the setting.

Q. Okay. But does the setting have an impact on whether or not something is malpractice?

A. I -- sure.

Q. So the setting could cause care that is otherwise appropriate, meets the standard of good care, if it's in the wrong setting, it could be malpractice. Is that true?

A. Sure. And I don't know how to answer that. I really don't.

Q. Okay. Well, I mean, and that's why I wanted to go to the factors. So instead of talking about malpractice, because that's kind of a legal word, you know, is part of providing reasonable care ensuring that it's in a proper location?

A. No. I think -- I think the location, by definition, is kind of a moot point. I really do. As long as you provide the actual care according to your skill set, knowledge, I think that is what the law is actually intending.

Q. Okay, so if you --
A. Now, if there's laws that specify that you can't do it at home, okay, then we don't do it at home. Then you -- then you ought not to do it at home. I know there's one specifically that says, you know, I think, don't do it in hotels. Okay.
Q. So if a person provided appropriate, like, Botox injections in a home according to good -- good skill, according to you, the -- the skill is done, it's injected correctly, it's the right medication in the right place, but it's done at home, is your testimony, then, that that would not be malpractice?
A. Well, you just told me now that it has to be done in a medical facility. So I guess now, now that I know that that setting is not approved, and I would say unless there's a home office that's dedicated, that has a dedicated medical aspect of it, then I probably wouldn't do it in the home.
Q. So the location where a good service is performed can cause that good service to be malpractice. Is that true?
A. Sure.
Q. Let's talk about medical records. Are you familiar with the requirement in Nevada law that says that a licensee should provide -- or, sorry,

maintain -- excuse me, maintain timely, legible, accurate, and complete medical records relating to the diagnosis, treatment, and care of a patient?

A. I am.

Q. And in this case, did you maintain timely, legible, accurate, and complete medical records regarding your treatment of Patient A in this case?

A. I have patient notes contained in my phone. Absolutely.

Q. So you have patient notes contained in your phone?

A. Um-hmm.

Q. And you believe that meets the standard of care required by Nevada law in this case?

A. I'm not sure. I'm not sure if it does.

In the definition it says "timely," well, what's the time frame? I don't know. You know, timely to you and I might be different. Timely to you might be two minutes; timely to me might be a couple of years. Okay? So timely is kind of ambiguous. Okay?

Complete, okay, well what defines complete? What needs to be included in the chart to be complete? That's kind of ambiguous.

I have the pertinent notes that I need to

know what I did to the patient, where I injected it, and the lot number of the Botox. So to me, my notes are complete.

Q. Okay. So you've been practicing as a physician assistant for 11 years. Is that true?

A. Correct.

Q. Okay. And your testimony today is that you don't understand what is meant by "timely" in the statute with regarding to the maintenance of medical records?

A. Well, I'm just saying, like, timely seems ambiguous, does it not?

Q. I think we could look at a definition in a dictionary if we wanted to.

A. If you'd like. Sure.

Q. Well, I mean, I guess my question is -- so you're saying you think two years could be timely to someone with regard to the provision of medical record -- or maintenance of medical records?

A. I'm just saying the term is actually ambiguous.

Q. Okay. Well, what is your opinion as to what it means by "timely"?

A. Well, you know, timely when -- when you complete the service.

Q. Okay. So what does that mean?
A. I don't know. I mean, I've had -- most of the time when I'm in the emergency department, I complete the charts that day.
Q. What if you're not in the emergency department? Like, you're performing Botox on a private client, what would your definition of timely for those medical records be?
A. I -- again, you know, my definition, I don't know. It could be a couple of years.
Q. So you're saying it could be a couple of years for you to maintain -- or create and maintain medical records for Botox?
A. It's never happened. I've never done that. But, like, yeah.
Q. But your testimony is that could meet the statutory definition of timely, a couple years?
A. I believe so, yeah. There's no definitive timeline, it just says "timely," leaves it ambiguous.
Q. And what is your opinion regarding complete medical records, what that means?
A. So I would complete my entire portion of my interaction, everything that transpired between myself and the patient.

Q. Can you detail out what that would be, like, a list of the things that would be included in a complete medical record?

A. A medical record would be a history of present illness is the -- you know, kind of the general term that I would, you know, describe, what the patient is looking for, what type of service we're going to perform, compose a complete medical history of all of his medications, his medical history, any adverse reactions, any surgeries that he's had, any social components of his health.

I would, you know, detail the actual procedure. I would state, you know, how I constituted whatever subject matter I was -- I was injecting him. I would comment on the actual gauge of the needles. I would comment on the locations and the amount in each location that I injected.

I would -- I would comment towards, you know, how the patient responded and what he -- what his appearance was and what his demeanor was, and his, you know, neurologic exam and affect was after the procedure. I would comment, probably, again, my technique on -- on using maybe the Gates theory of distraction for the nerves, and -- yeah.

And then I would ensure that he had all of

his -- or prior to the creating -- to performing an encounter, I would make sure that he had all of the appropriate disclosures signed and noted so that he fully understood what procedure we were doing and the risk and -- and concerns that could come about.

Q. Is it your testimony, then, that you did all of that with Patient A?

A. Yeah, absolutely. Except my job, my job, was the actual medical encounter. The med spa owner, her job, which she confirmed, she stated that she did in her EMR, had him sign all of the appropriate disclosures.

Q. Did you see those prior to making the injections?

A. I did not.

Q. So you injected someone without verifying that they had consented to that procedure?

A. I think that takes place quite a bit. MAs throughout the country make sure the patients get all of the consent forms signed prior to the -- to the actual practitioner, you know, doing it. That happens in offices all over the country every day.

Q. I'm not saying that they can't --

A. So they -- so the physician has to rely on the MA to ensure that they did their job. I was

doing the same thing with the med spa owner.

Q. So you were treating the med spa owner as if she was your medical assistant. Is that fair?

A. I mean, I wouldn't put it in "medical assistant"; I would say that we were treating one of her patients. One of her clients, I should say.

Q. Yeah. Is she licensed to perform medical services?

A. No, she's not. She didn't provide medical services.

Q. Okay. So it wouldn't have been her patient, then?

A. So if you heard, I rephrased it: her client's, one of her clients.

Q. Whose patient -- who was Patient A a patient of?

A. Well, medical care was my patient, but it was her client.

Q. So your testimony is -- I just want to clarify. So all the things you listed, it was pretty extensive, all the things that you would include in a complete medical record. Did you include that in the medical record for Patient A?

A. So I have my notes where I -- if I have access to an -- her EMR, I could have absolutely

included that.

Q. So your notes --

A. And I -- and I utilized all of that information and I conveyed that to Dr.~Clark when she came back -- when he came back in. And a lot of the note, the body of the note, that information comes from what I gave Dr.~Clark.

So, I guess, technically I did, you know, helped create a medical record for this guy.

Q. You helped create a medical record that was done by Dr.~Clark when the patient presented in the emergency room?

A. Correct.

Q. Is that the same as a medical record of your encounter with Patient A prior to his presentation in the emergency department?

A. No, that is not.

Q. But your testimony is the records that you created and that you have in your possession are notes on your phone?

A. Correct.

Q. Did you provide those to the Board in response to the Board's allegation letter?

A. I did not.

Q. Did you have those notes available at the

time that you responded?

A. I did.

Q. Why didn't you provide them?

A. Again, like I said earlier, I was under severe duress and I was operating by myself, and I responded to the Board according to what I assumed the Board wanted.

You know, had the Board solicited again and reminded me, then I -- like they did Dr. Harris, I probably would have given them.

I did it out of error. It was absolutely my error that I did not provide those photos and that information.

Q. And at any time, did you realize the error of not providing those notes and photos to the Board in your response?

A. When I was composing the response, no.

Q. So I --

A. I submitted the response in its entirety thinking that is what -- that would suffice the needs of the Board. Afterwards, I was under the inference, because of this investigation -- this other investigation, that this case was going nowhere and that it was -- and that you guys were not going to further pursue this. So I did no

longer concern myself with this.

Q. Why did you have that belief?

A. [redacted]

Q. Okay.

A. If you would like, I can produce that email.

Q. No, I don't need you to produce the email.

[redacted]

A. Absolutely. Once I -- once I made Lisa Zastrow, who was handling my other case, aware of this, I severed all communication with the Board and I went through her. So she managed it.

So I kept her abreast of anything that I thought was important, and she kept me abreast of everything she thought was important that was coming from the Board.

Q. Okay. So on July 21, 2023, when you

responded to the Board, you did not provide the photos and the notes that you say you had in your possession at that time. Is that true?

A. Correct.

Q. At any time after responding to the Board, did you realize, oh, I have these things, these records, I should provide them?

A. No. I relied on my communication with -- with Lisa, like I said.

Q. But that happened immediately after filing the response with the Board?

A. I mean, I've had continuous communication with her. We've discussed this and the other case extensively.

Q. Okay. I -- all I'm trying to ask is if after responding to the Board, was there an opportunity for you to go, oh, I should have sent these things. I think I'm going to send them?

A. Never even crossed my mind.

Q. But if we look at the allegation letter that the Board sent to you, is it fair to say it does ask for healthcare records for the patient?

A. Absolutely.

HEARING OFFICER HALSTEAD: Ms.~Bradley, would this be an okay time to take a break?

MS. BRADLEY: Yes.
HEARING OFFICER HALSTEAD: Okay. Let's come back at 10:15.
MS. ZASTROW: Okay. Thank you.
THE WITNESS: Thank you.
(Recess from 10:06 a.m. to 10:15 a.m.)
HEARING OFFICER HALSTEAD: Okay. We're back on the record in case number 24-42281-1, In the Matter of Charges and Complaint Against David Kayle McCleve, PA-C. We are on direct examination of Mr. McCleve by Ms.~Bradley on behalf of the IC.
And I remind you, Mr. McCleve, you are under oath.
THE WITNESS: Okay.
MS. BRADLEY: Thank you.
BY MS. BRADLEY:
Q. Before we move on, I want to clarify, and I apologize. Earlier, I referred to a statute regarding injection of fillers.
Mr. McCleve, Botox, is this considered a filler?
A. I -- by the legal definition, I'm not sure.
Q. I'll just put forth, I referenced the

wrong statute, and I'm apologizing for that. Because the 629.086 statute talks about dermal or soft tissue fillers, but there is a specific one to Botox, and that is NRS 454.217.

And so I just wanted to make sure I corrected the record. The wording of that is very similar. But it is specific to neuromodulators that are derived from clostridium botulinum or is bio similar to or the bio equivalent of such a neuromodulator.

MS. ZASTROW: Can you state that statute again, please?

MS. BRADLEY: It's NRS 454.217.

THE WITNESS: I would also like to -- if you -- if we can go back to some of your previous questions. This is your previous question. You asked why I didn't include --

BY MS. BRADLEY:

Q. No.

A. No, you don't want to?

Q. Your attorney can ask you that on redirect -- or on -- when she gets a chance to ask you questions. But for now, what you said to me is what you said. And I just wanted to clarify on the record and just ask you about that 454.217.

So are the injections that you provided to Patient A in this case a neuromodulator derived from clostridium botulinum?

A. They are.

Q. Okay. And so just so the record's clear, this provision, in 1, sub C, says that the location that those items can be injected into a patient has to be a medical facility, the office of a physician or physician assistant, advanced practice registered nurse, or podiatric physician. So it's same as what we talked about, just a different statute.

A. Okay.

Q. Okay. I think I'm going to ask you a couple questions about Exhibit 10. We haven't admitted it, but I think I'm going to because it's been referenced a lot.

So if you would turn to what's been premarked as the Board's Exhibit 10, do you recognize that document, Mr. McCleve?

A. I do.

Q. And what is it?

A. This was an email communication that I sent to Ernesto Diaz seeking clarity on some of the intricacies of the neuromodulator laws.

Q. Okay. Is that what it is? Because let's

look at the top. Who was this sent to, this email?
A. This was -- I mean, I don't know who. I believe I sent it to Ernesto Diaz, I believe.
Q. Okay, but --
A. Oh. Does it --
Q. The document you're looking at in Exhibit 10 --
A. Oh, does it say Don Andreas? Okay.
Q. Yeah, I think he -- he printed it. Are you familiar with how Outlook prints emails?
A. Nope.
Q. Okay.
A. I don't use Outlook.
Q. Okay. If I told you that the reason Mr. Andrea's name is on the top is because he had printed this document, do you have a reason to disagree with me?
A. I don't.
Q. Okay. And who was this email from?
A. Myself. The initial part.
Q. Okay. I'm looking at the line that says "from" on the top of the document.
A. You sent this to me.
Q. Okay. What date was that sent?
A. March 2023. March 17th.

Q. Okay. And who was cc'd on it?
A. Ernesto Diaz.
Q. And do you remember receiving this document?
A. I do.
Q. Does this appear to be a true and correct copy of an email that you received from me on behalf of the Board?
A. Sure.
MS. BRADLEY: Based on Mr. McCleve's testimony, I would ask that Exhibit 10 be admitted into evidence.
MS. ZASTROW: I don't have any objection. However, I would state that Ms.~Bradley has now made herself a witness in this case, subject to me calling and questioning her. I would also note that the exhibit is incomplete.
MS. BRADLEY: I'd be glad to supplement it. I didn't realize, actually, it was not including Mr. McCleve's email until preparing for the hearing.
I would also object to the -- any possibility that you could call me as a witness, but we can argue about that if and when we need to.
MS. ZASTROW: Well, you're interjecting

yourself as a witness in the case by introducing an email that you sent to Mr. McCleve.

HEARING OFFICER HALSTEAD: So the email is admitted, and I don't agree that interjects Ms.~Bradley as a witness. The email speaks for itself, and it's admitted accordingly.

(IC's Exhibit 10 admitted.)

BY MS. BRADLEY:

Q. Mr. McCleve, is the date that you receive this email prior to the date of the incident in this case?

A. It is -- no. Wait. I'm sorry. The actual Botox injection?

Q. Yeah. The incident that happened with Patient A on April 8, 2023, did that occur before or after you received this email?

A. It occurred after.

Q. Do you see the statutes that are provided in here? I think we've been talking about them, but I just want to make sure that you -- you do see that, NRS 454.217 and 629.086 on the second page.

A. Okay.

Q. Okay. Did you read this email when you received it?

A. I did.

Q. And did you look at the paragraphs after the statutes?
A. I'm looking at it now.
Q. Do you recall if this changed anything with regard to your practice when you received it?
A. No, it did not change anything.
Q. And what was your intent in posing this question to the Board?
A. My intent in what?
MS. ZASTROW: Objection. There's no question. The prior email is --
MS. BRADLEY: Yeah. And I don't have the prior email, at least not in this. I don't recall if he emailed. He may have called. I can ask Mr. Diaz that if we need to. Perhaps Mr. McCleve remembers.
THE WITNESS: I believe it had to do something with sharing vials of Botox, I think.
BY MS. BRADLEY:
Q. Okay. Yeah.
A. A neuromodulator paralytic.
Q. Okay. And so you were just seeking clarification?
A. Yep.
Q. Let's go back to the allegation letter

that you received from the Board. If we look at NSBME 001, do you see the number 1 underneath "It is alleged"?

A. I'm sorry, which -- okay, yeah, I do.

Q. Okay. And I just want you to look at the last part, we're not going to talk about the first part, but do you see that last --

A. I guess I got a -- I got a question. If we're not going to view this on its entirety, why did it get included in here, especially with the allegations?

Q. It's not your time to ask me questions. Your attorney can ask you questions when she has her turn.

We've talked about this a lot with other witnesses, and my question is just for you to see where it says "or documentation of your competency." Do you see that?

A. Yep.

Q. Did you provide the Board in your response and Exhibit 2 with any documentation of your competency to provide Botox injections?

A. In a previous case that we are currently investigating, the Board has access and has been given my CV, on which it states that I worked in

dermatology.

Q. Okay.

A. So it was my understanding that they had that information. Had they specifically asked for a new CV, I would have given it to them.

Q. And so you think that documentation of your competency is asking for a copy of your curriculum vitae?

A. I think that that would satisfy the, you know, the requirements for, you know, documentation of my competency.

Q. But earlier --

A. It's my -- it's my personal statement that I worked in dermatology.

Q. Earlier today, you told me you had certifications from training that you had received --

A. Okay.

Q. -- and it sounded like you had certificates or other proof of those certifications. Is that true?

A. Yeah.

Q. And did you provide those to the Board in response to the allegation letter in this case?

A. I didn't believe that the certificates of

PLS, ACLS, ATLS, HIPAA, liposuction were pertinent to this. And so no, I did not include those.

Moreover, the Board already has an extensive file with all of those things listed.

Q. So let's talk about Dr.~Sheep's supervision of you in this case -- well, scratch that. I withdraw.

You've been a physician assistant for 11 years. Is that correct?

A. Correct.

Q. And have there been times in your career when you wanted to talk to your supervising physician about a specific patient that you treated?

A. Absolutely.

Q. Without divulging confidential information or names, can you, maybe, give us an example of a time like that that occurred?

A. That happens every day in the ER, on shift. There would be problematic patients that come in and they have whatever conditions that, you know, could suggest that their -- their condition is grave.

And so I always made it a point to go ahead and if there was some sort of question or propensity for worsening outcome or death, I made

sure that the supervising doc with which I was working, whether it was Richard Harris or Andrew Morrison or whoever, Ms. Clark, both of which I don't have signed supervising agreements with, I always made them aware of the patient's condition and treatment plans.

Q. Well, let's go back to the supervising physician you have on record. And what I'm asking you about is the requirement we talked about earlier, that they review -- selected a chart and that you meet with them a minimum of part of the day, once a month. Correct?

A. I'm sorry, a minimum of?

Q. So the requirement, we talked about it earlier, there's a couple of things the physician -- supervising physician and physician assistant must do. One of them is have a meeting at least part of the day once a month. Do you recall that?

A. Sure. Yeah.

Q. And there's also a requirement that the supervising physician review an initial selected charts. Are you aware of that?

A. I am.

Q. When you have your face to face or telephone, because it can be done in multiple --

virtual connectivity issues -- specific patients.

A. Just so they have -- they're aware of the patients that I treated, maybe the amount of patients that I've treated, whom I've treated, what treatment they got --

Q. Well, for example -- for example, if a patient had a case that was difficult for you to provide treatment on, is that something you might follow up in discussion with your supervising physician of record?

A. Sure.

Q. If that patient potentially had an adverse reaction or something you wanted to note, is that something you might talk to your supervising physician about?

A. Sure.

Q. And I'm not asking if you've had a consumer complaint, but let's just pretend that there was one.

Let's say Patient Jones filed a complaint regarding care you provided, is that something that you would talk to your supervising physician about?

A. Absolutely.

Q. Okay. So you would make your supervising physician aware of cases that might be a little bit

abnormal and possibly could help having conversation with that person about?

A. Correct.

Q. In this case with regard to Patient A, your testimony earlier was that Dr.~Sheep was supervising your care of Patient A. Did you talk to Dr.~Sheep about Patient A?

A. Absolutely.

Q. And so approximately when did that communication occur, if you recall?

A. I can't recall. It was within a couple of days.

Q. Okay.

A. Dr. Sheep and I kept in very close contact. Moreover, Dr.~Sheep was the receiving doctor while working in an ER shift at Sunrise Hospital.

Q. Okay.

A. So he was well abreast of what was happening with this patient.

Q. Okay. So not only did Dr.~Sheep authorize you to perform Botox services in any location -- and this is your testimony -- in any location that you wanted under his supervision --

A. I didn't say "any location." I just said

he authorized me to do Botox, yes.

Q. Okay. And where did he authorize you to perform Botox services?

A. Well, the plan was to do it in medical offices.

Q. Okay. And what did you do in this case with regard to Patient A?

A. Well, I shot up Botox in a medical hospital setting.

Q. Okay. Did Dr.~Sheep authorize you to provide Botox services to Patient A in North Vista Hospital?

A. We did not have a discussion about that.

Q. Okay. So was Dr.~Sheep, then, supervising your provision of services to Patient A in North Vista Hospital on April 8, 2023?

A. He was not supervising me while I was acting as an emergency medicine PA in North Vista that day; he was supervising me as I was carrying out a cosmetic procedure.

Q. Okay. I'm sorry, I think you answered two different ways. Your first sentence -- I just want make sure I'm understanding, he was not supervising the provision of emergency medical services you provided at North Vista Hospital. Is that correct?

A. He was not. He was not. That day was Dr. Clark.

Q. Okay. And your testimony, though, is he was supervising the treatment that you provided to Patient A at North Vista Hospital on April 8, 2023. Is that correct?

A. That's not what I said, no.

Q. Okay. What did you say?

A. I said that Andy Sheep was my supervising doc for cosmetic procedures.

Q. And he authorizes you to provide cosmetic procedures at North Vista Hospital on that day?

A. No, --

Q. Who did?

A. -- he didn't authorize at North Vista Hospital. He has no privileges at North Vista Hospital.

Q. Okay. Well, who authorized you -- what supervising physician authorized you to provide medical services that were cosmetic injections to Patient A at North Vista Hospital on April 8, 2023?

A. Andy Sheep authorized me --

MS. ZASTROW: Objection. That's -- objection. That's compound. She's asking multiple questions.

MS. BRADLEY: My question, I mean, I'm trying --

MS. ZASTROW: And it's asked --

HEARING OFFICER HALSTEAD: Stop. I understood the question, and Mr. McCleve seemingly understood the question because he's answering it.

So now, Ms.~Bradley, please restate the question as you deem appropriate since we didn't get to finish the answer.

BY MS. BRADLEY:

Q. Mr. McCleve, who was supervising the care that you provided to Patient A at North Vista Hospital -- and that care was Botox or similar injections -- on April 8, 2023?

A. Andy Sheep was supervising the cosmetic procedure that I performed at North Vista. He was not affiliated with North Vista. He did not have privileges there at North Vista.

Q. So your testimony is that Dr.~Sheep was supervising the treatment you provided to Patient A at a location that he doesn't work. Is that true?

A. Yes.

Q. And your testimony is that Dr.~Sheep doesn't have privileges at that location?

A. Correct.

Q. But you still believe he was supervising the treatment that you provided there?
A. Again, yes. Dr. sheep was my supervising doctor.
Q. Okay.
A. I had several supervising doctors concurrently.
Q. Well --
A. For this particular thing, I -- I don't know how you want me to answer this question, Ms. Bradley, other than the fact that under the cosmetic procedure that I performed, Dr.~Sheep was my supervising doc.
Q. And let's clarify. You said "several." You had several physicians. What does "several" mean?
A. There were three that were on file; correct?
Q. No.
A. Yes, there were. Schon Roberts, Richard Harris, and Andrew Sheep.
Q. Okay. Let's look at Exhibit 7, because I just want to refresh your recollection and not have you intentionally -- or in accident say incorrect information.

Exhibit 7, page 014, let's look at the date of association and disassociation for Dr.~Sheep. Do you see that?

A. Yeah, I do. Sorry, I missed it. So -- so it was just two at that time.

Q. I just wanted to clarify.

A. Yep.

Q. Okay. All right.

A. So would the terminology be more appropriate if I said a couple of doctors instead of several? Is that what you're looking for?

Q. I just wanted to make sure what you meant by "several" is what I understood. And I guess I would say two is not several; that would be three or more. And I just wanted to make sure because I thought you were probably not remembering, is all.

MS. BRADLEY: Sorry. I'm just checking my notes. I don't think I have -- I have no further questions for Mr. McCleve at this time. I would reserve the right to ask further questions and redirect.

Thank you.

HEARING OFFICER HALSTEAD: Ms.~Zastrow, before you start -- I don't know if Ms.~Zastrow was intending to call Mr. McCleve, but I don't know if

the parties have an agreement about, just both parties utilizing their time while he's called by the IC to ask their questions so that Ms. Zastrow can expand the scope beyond what was asked on direct.

I guess that's a question for you, Ms.~Bradley, if you're going to require her to recall him or not?

MS. BRADLEY: I don't require her to recall him. And, actually, NRS 233B -- I can get the exact reference -- does not limit her on, I guess, essentially cross on what was asked on direct; it actually specifically allows that that question go beyond that.

So I don't object if she wants to ask anything she'd like other -- I mean, obviously, maybe if it's not something I think should be asked, but in general, I think she can ask whatever she'd like.

I don't have an objection. She can also call him later once we rest, if she would like. That's fine as well.

MS. ZASTROW: So I think she said yes, we can.

MS. BRADLEY: Um-hmm. And the law

specifically allows it. I was just going to find that version so that -- it's NRS 233B.123, sub 4, and it specifically says:

"Each party can call and examine, cross-examine opposing witnesses on any matter relevant, even though that matter was not covered in direct."

MS. ZASTROW: Right. We have an agreement, so I think we can move forward.

HEARING OFFICER HALSTEAD: Yes. Go ahead, Ms. Zastrow.

MS. ZASTROW: Thank you, Your Honor.

And I'll apologize in advance to the court and everyone. Obviously, there have been a lot of questions asked. I have a lot of notes. And so if there are long pauses, just bear with me. Fortunately, long pauses don't show up in the record.

CROSS-EXAMINATION

BY MS. ZASTROW:

Q. I want to start with the email that we looked at, which is Exhibit 10. Can you turn to that, Kayle. And by the way, do you have all of the exhibits in front of you, either by computer or --

A. I do.

Q. Okay. Can you look at that email, Exhibit 10?

A. I did. I've got it up.

Q. Okay. That's Ms.~Bradley responding to a question that you asked her specifically about Botox injections. Correct?

A. I believe so. I think that -- I think it was more about leaning towards can you -- can you share vials of Botox, is -- was --

Q. Yeah. I meant, in general, it was a question about administering cosmetic paralytics. Right?

A. Correct.

Q. So that was in March of 2023. Correct?

A. Correct.

Q. Did you -- it's very clear that the Board was aware that you were working in cosmetics in March of 2023. Is that your -- do you agree with that?

A. I mean, whether they opened up my file and actually checked, I don't know, but I would assume, if they are the custodians of all supervising agreements and they did just a basic Google search on where -- who worked where and what, I would assume they could come up with a scope of practice,

if that -- if that's what they wanted to do.

Q. In that email, she never says to you that you're not qualified to even be asking such a question, does she?

A. No. Actually what she responded with is she responded with NRS 4 -- was that 454.217? And it lists who can actually provide a neuromodulator: physician or physician assistant, a dentist, a registered nurse.

Q. An LPN?

A. So a licensed practice -- practicing nurse, absolutely, advanced practitioner nurse, a pediatric physician.

Q. A podiatrist?

A. I think is a -- oh, yeah, podiatrist as well. Sorry. I thought that that was an E.

So, yeah, there's a lot of people that can do it, even down to the basic level of a nurse.

Q. Let me ask you, are you a bit frustrated with this process?

A. You know, I looked -- I gave a very heartfelt email acknowledging that. You know, Ms.~Bradley went ahead and -- and, you know, asked me a bunch of questions. And this is the dumbest thing in the world. We've got Ms.~Halstead, who's a

professional, we've got you that's a professional, we've got Ms.~Bradley, we've got Ms. Contine. I'm a professional. We've got, you know, a -- Ms. Smith. All for what?

I took care of this patient. Sure, I violated the policy at North Vista, but I made sure that he was an appropriate candidate. I administered the medication appropriately. And then when he had an adverse event, I helped take care of them, helped Dr.~Clark take care of them. And then I followed up with them the next day.

I would only hope that Ms.~Bradley, when she goes into the emergency department -- or Ms. Contine, get somebody that actually cares on that level.

I appreciate their interest in making sure that it's safe. I appreciate that. But this has been the most worthless thing I've ever seen in my entire life. They could be doing something good.

So, yeah, am I frustrated? Absolutely. This has been just a miserable, miserable witch hunt.

I agreed that the -- that the -- the record was, you know, poor and I didn't get it, which I attested to that. You know, I got -- you

know the -- the reason that I didn't send in the pictures and what have you is because on this settlement agreement, which is part of another case, number 6 of the initial settlement agreement, it says:

"The remaining count, records violation of this complaint, as well as invoice number 2322820, the investigation as related to loss of hospital privileges, will be dismissed."

At what point, after getting you involved, would I even think about sending any anything else into it?

I mean, the fact that they're actually questioning whether I am capable of administering Botox when I do chest tubes, when I do LPs -- I worked in a community-access hospital emergency department taking care of trauma, and this is where Ms.~Bradley and Ms.~Contine want to go ahead and -- and put their efforts? Man --

Q. All right. Let's back up. Let's back up.

A. Okay. Sorry. Yeah.

Q. I think -- no. I think it's obvious that you're frustrated with the process, and I asked you if you were. And I think you went off with it on a narrative, and I understand, but that's also because

there's another case against you. Correct?

A. Correct. Correct.

Q. And that case was pending at the time that you received this letter from the Board with the allegations. Correct?

A. Correct. And it was my understanding that both of these cases were being handled with you and Ms. Contine. Even Ms.~Bradley sat in on -- on the initial meeting with Mr. Woodman to -- to go ahead and, like, introduce evidence, and then she was there for the hearing.

So yeah, all of this stuff has been, I thought, omnipresent amongst you guys, amongst you as my lawyer, and amongst -- okay.

Q. That's okay. I just want you to try just -- I know it's been a long three years.

The implication is that you didn't provide requested information to the Board in your email that was sent, which is Exhibit 2. That -- that's the implication and that's accurate, correct, you didn't send the medical records. Right?

A. Correct.

Q. And you fell on your sword in that letter, didn't you?

A. Absolutely.

Q. You admitted it?
A. Absolutely.
Q. Following sending that letter, did you have the understanding that we were working on resolving the two cases together as one?
A. Absolutely.
Q. Were you ever asked for additional information related to this case? And I'm not suggesting --
A. No.
Q. I'm not suggesting that it's the Board's responsibility, but do you have a right to rely on representations from the Board?
A. I feel that I do. Their -- their reason for existence is to help provide the highest level of care. So if they needed something, they should have reached out.
Q. You did not refuse to provide records. Correct?
A. No. No. In fact, I composed that email without legal counsel.
Q. That's right. You didn't -- without revealing any attorney-client privileges, you didn't consult me for sure. Right?
A. No. No.

Q. Unlikely I would have told you to write an email like that. Right?

A. I -- you actually reprimanded me. You reprimanded me and said, "Don't ever do that. Run it through me."

Q. Because what did you do? You admitted wrongdoing. Correct?

A. Absolutely.

Q. And you were willing --

A. I had nothing to hide.

Q. You had nothing to hide. You admitted wrongdoing. Right?

A. Yep. That was a moral injury on my part, and I shouldn't have done it. But the actual delivery of -- of care was on point.

Q. Sorry about that. Just one second.

At no time during the pendency of this case, along with the other case, did you think that you were not cooperating with the Board. Correct?

A. Never did I think I was not cooperating.

Q. Okay. And you did cc legal counsel on that email, me and one of your friends. Correct?

A. Correct.

Q. So the Board knew you had counsel. Correct?

A. Correct.
Q. To your knowledge, did they ever ask me for additional information or imply that your response was inadequate?
A. No.
Q. You know that the Board could actually charge you for failing to respond for records?
A. I did. I did know that.
Q. They didn't do that, did they?
A. No.
Q. There's an actual NRS that allows the Board to initiate a complaint for simply failing to cooperate with their investigation. You're aware of that. Right?
A. I totally agree, totally. Yeah, I am -- I am aware of that.
Q. Your understanding was that the two cases were being discussed and negotiated together. Correct?
A. Absolutely. That number 6 on the -- on the, you know, informal -- or the formal settlement that Deonne submitted co-mingled both of these cases. At the very last part -- the last part of the deal was the investigation related to this particular case will be dismissed.

How was I not supposed to assume that they were working together?

Q. They were sort of holding this case over your head and dangling it?

A. Absolutely. Absolutely. Amongst other things. I mean, the first thing that they wanted to do in the other case is suspend my license till 2028. They wanted to take away my ability to provide for my family, which they've done, effectively.

Q. And I want to -- your state of mind is being questioned as it relates to potential penalties in this case, so I think it's important to ask you that and explain why you did what you did and why you did not do what you did not do.

But again, in no way did you intentionally circumvent any things that were asked of you from the Board. Correct?

A. In no way did I try and misguide, mislead, or misrepresent.

Q. And at the same time that this letter came down, again, you had claims against you related to your work at My Shape Lipo. Correct?

A. Correct.

Q. And that related to liposuction. Correct?

A. Correct.
Q. And you lost your job. Correct?
A. Correct.
Q. At this time, you were not working. Correct?
A. Correct.
Q. At this time, your career was falling apart because of these cases with the Board. Correct?
A. Not only my career, my family.
Q. And I asked --
A. These are serious allegations. You Google search my name -- because -- you know, because of the inconsistencies with the Board in -- in the previous case and their witch hunt to go after me and go after my character, it has caused irreparable damage.

I mean, for heaven's sakes, this is ridiculous. I treat every patient knowing that the next morning I have to look in the mirror and say, did I do everything appropriate for that patient?

Did I violate some policy? Sure. And I admitted to it. But they continue to hold this over my head.

Q. I'm going to get you to admit to it again,

but you've done so ad nauseam. Did you lose jobs because employers found the complaints in this case which talks about the patient being intubated and unresponsive?

MS. BRADLEY: I'm going to object to that question. I don't know how anything regarding to Mr. McCleve's issues in obtaining employment is relevant to the allegations contained in the case.

MS. ZASTROW: You're seeking discipline in this case, and it goes to the nature of the discipline he's already sustained, the consequences that he has already endured. That's what it goes to.

If you're going to be asking for certain sanctions, I have the right to talk about what has already occurred and to argue what sanctions should or should not be appropriate, based on all the circumstances.

MS. BRADLEY: I'm going to object again to that because the time to talk about disciplinary recommendations is when this matter is -- goes before the Board after the Hearing Officer makes her recommendations.

There is an opportunity for Mr. McCleve to talk about disciplinary sanction, respond to our

recommendation -- if there is a finding, there may not be -- and so this is all premature regarding discussion about sanctions that he should have.

MS. ZASTROW: It's absolutely --

HEARING OFFICER HALSTEAD: Ms.~Zastrow, I actually get to make recommendations as to discipline in my findings.

I'll let you answer this question, but I don't want you to go further down this road.

MS. ZASTROW: Thank you, Your Honor. And that's what I was going to say, as you are making recommendations as to discipline.

And I am only calling him one time, so I have a lot of bases to cover. I don't want to have to recall him.

HEARING OFFICER HALSTEAD: You don't have to explain. It's okay. I'll allow you to ask the question.

And, Mr. McCleve, if you can answer.

MS. ZASTROW: Thank you. And --

HEARING OFFICER HALSTEAD: You do you need the question repeated, Mr. McCleve?

THE WITNESS: Yeah, please.

BY MS. ZASTROW:

Q. I am sorry. Sorry, Mr. McCleve.

The Board, in considering factors for specific discipline, they consider a number of things. The severity of the violation is one. Whether life -- the life of the patient was endangered. Any disciplinary history and any mitigating or aggravating circumstances. That's what I'm asking you about.

You lost your job because of complaints filed by the Board. Correct?

A. So I lost my job at North Vista because I violated their policy, I violated the bylaws of North Vista. But I have had extreme difficulties procuring other employment because of the Board's allegations in both cases.

Q. Right. And you have actually had employers tell you that they cannot hire you because of the complaints?

A. Not just employers. I had a chief of medical officer and a ER director tell me that I would not get through credentialing with the hospital system I was applying with it because of this.

In effect, it's basically prevented me from providing medical care in an emergency medicine service.

Q. And to your knowledge and to my knowledge, and we had some discussion yesterday, the complaint -- if you Google your name, your complaints come up, but none of your responses or motions or defenses are public record. Is that correct?

A. That's correct. The Board, if you click onto my name under my profile on the Board, they did a very good job of making sure both allegations were very searchable, but they do not include any of my response or my rebuttal.

Q. All right. Let's talk about your training. I didn't hear anyone really ask you about your specific, extensive training in cosmetics.

Prior to this incident with Patient A, had you administered paralytics?

A. Hundreds, maybe thousands of times. When I worked in derm, we would do that daily. I worked at Dermatology and Skin Cancer of Las Vegas. That was one of the mainstays of treatment that we would, you know, employ, both on a therapeutic level and a cosmetic level.

Q. So prior to this incident, you had administered, to your testimony, potentially thousands of injectables, including Botox?

A. Absolutely. Fillers, you know, paralytics. And I've used most of the paralytics, not just Xeomin. I'm well-versed with Botox. I'm well-versed with Dysport. I'm well-versed with -- you know, there's a newer one that came out, Jeuveau. I'm -- yeah, well-versed.

Q. At the time of this incident -- let me ask you this: Have you read the letter from Dr. Andy Sheep that he's submitted to the Board?

A. So you sent that to me when the Board decided to move forward. I didn't open it up until, you know, several other days -- or several weeks ago. Sorry.

Q. We just received it in the last three months. Correct?

A. Correct.

HEARING OFFICER HALSTEAD: Ms. Zastrow, I don't mean to interrupt your flow, but that's an exhibit we have?

MS. ZASTROW: Apologies.

HEARING OFFICER HALSTEAD: It's Exhibit 4, I believe. Is that correct?

MS. ZASTROW: Yes.

HEARING OFFICER HALSTEAD: I just want to make it clear for the record what we're referencing.

BY MS. ZASTROW:

Q. Can you please look at Exhibit 4?

A. Okay.

Q. First of all, what's the date of that email?

A. June 14, 2023.

Q. Okay. So over two years ago; right?

A. Yep.

Q. First time you saw this letter was after the Board produced it in this case, and you saw it a couple weeks ago. Correct?

A. Correct.

Q. And what was your immediate response to this letter?

A. Punch in the gut. I felt --

Q. Is it actually -- go ahead.

A. I felt betrayed. I felt -- I felt like I was -- you know, like he just blatantly lied.

Q. And that was going to be my question. Are his statements in here accurate?

A. No.

Q. Were you having conversations with Dr.~Sheep all throughout 2021, 2022, 2023, related to cosmetics?

A. I was. In fact, prior to me having

knowledge of this, in the fall of last year, he wanted to get me on at a hospital down in Arizona where he works.

Q. Meaning, you still communicate with him. Correct?

A. Yeah.

Q. And even after these complaints, he actually knows the real facts of these issues. Correct?

A. Absolutely. That's why I'm surprised the Board didn't call him as an expert witness.

Q. And so even knowing -- he knows what occurred and he has been trying to help you find work. Correct?

A. Correct.

Q. Okay. Are the statements in this letter or in this email accurate?

A. No.

Q. I want to talk about the response that you wrote to the Board, if you will turn to Exhibit 2 again.

We've already established that this came -- if I told you this allegation came exactly one month after the other complaint was filed, would you have any reason to disagree with that?

A. No, I wouldn't.
Q. You were unemployed at that time. Correct?
A. Correct.
Q. Your state of mind when you wrote this email, is it fair to say that you were trying to be overly honest?
A. Yeah. Again, I wanted to have full disclosure and paint the picture of what actually happened so that if anyone ever questioned my motives, it was just -- it was out there. I didn't want to try and hide anything.
Like Ms.~Bradley inferred that I was hiding -- didn't turn in the, you know, the medical record, like, that is preposterous.
Q. So let's talk about what you said in the letter, because no one's read it into the record, and that's fine. But I don't want to necessarily have you read the entire thing, but it is -- it does contain quite a bit of information.
You did talk about your relationship with Dr.~Sheep. Correct?
A. I felt like I even, you know, highlighted that I went to three separate medical providers and pitched this against them, and I chose to go with

Dr.~Sheep.

Q. What's that, "pitched"?

A. Well, I knew that in the medical spa industry, there's a lot of unsavory characters, there's a lot of medical care that does not meet the standard. My thought was, if I can go in and provide these medical services at a high level and give them amazing results, then that would be a good business model. And I needed a supervising doc.

So I didn't necessarily have an actual address to practice from just yet. We were starting to solidify relationships with some of these med spas.

Q. But the supervising agreement that's on file with the Board, which they say is public record but we can't find it, and which -- it had the address of what, My Shape Lipo?

A. My Shape Lipo. I brought Dr.~Sheep in to be a supervising doc at My Shape Lipo.

Q. Okay. You worked --

A. And the Board was well aware of that.

Q. Right. At My Shape Lipo, what type of work were you doing?

A. I was doing liposuction, tumescent liposuction, invented by a dermatologist.

Q. Okay. And at the same time -- or at some point, you were working in ER medicine and also doing what Dr.~Sheep calls "boutique medicine." Correct?

A. Absolutely. I loved emergency medicine. It is such a tough job. It gives -- you know, there -- there's -- you have to be an incredible person to work in emergency medicine, both on the nursing staff, the MAs, everybody. The next time anybody goes in there, you should say thank you to everybody because nobody else can treat you that way. They can't take care of you that way.

And I love it -- I continued -- I still want to be in it.

But also, it comes with a lot of stress and a lot of, you know, like, just negative stuff. And so why wouldn't I look for a side hustle? I guarantee you, if you go talk to all of the doctors that are in the ERs right now, they all have a side hustle.

Q. And I believe Ms.~Elmquist testified to that yesterday.

And you put that in your letter to the Board. Correct?

A. Absolutely.

Q. You talked about the stress of working in the ER. Correct?
A. Yeah.
Q. And you talked about wanting to have your own business in boutique cosmetics. Correct?
A. Right.
Q. You weren't seek -- you weren't seeking -- you were not seeking out another supervisor because you had one with Dr.~Sheep. Correct?
A. Correct.
Q. And in this letter, you're explaining to the Board that you're looking to transition out of ER medicine and into boutique medicine as a business model. Correct?
A. Sure. Absolutely.
Q. And you were forming relationships with various med spas in the community at this time. Right?
A. Correct.
Q. Okay. And so tell us what happened. And you can use your email to guide you, you can tell in your own words, I think you explained it well in your email. What happened? You know, you're at work in the ER that day and you're contacted by someone you want to do business with. Right?

A. Well, so I had been contacted previous -- a day or so previous. We had scheduled -- this was a new relationship with a med spa owner, who's non-medical. She has an EMR. Allegedly, he had signed all the previous paperwork. She was getting -- he was getting treatment with other modalities. She wanted me to show up and give him Botox in a very urgent manner at a very short time frame.

I scheduled it for the office. I couldn't -- I didn't get access into the office, so I went to my shift.

She called me, stated, oh, he's a VIP client. This was a new relationship with this particular med spa owner. I was trying to create goodwill. The guy calls up, oh, I've had it millions of times. Like, yeah, dude, you can do it in the parking lot.

Q. That's what he said? I'm sorry.

A. That's what he said, yeah.

Q. You didn't say that?

A. That's what he said.

So I -- I'm trying to exhibit goodwill to foster this relationship with the med spa owner, and that's why I invited him over to North Vista. That

was the motive.

He shows up, I take him in to North Vista. I appropriately administer the medicine. He leaves. Forty-five minutes later, he has a reaction. He comes back in. I self-report, I tell Dr. Clark what had happened. I was very unapologetic about it.

Q. All right. Kayle, stop.

A. Okay.

Q. Back up. You brought him into the facility. Explain exactly what happened. What did you do? Did you ask him any questions?

A. Yeah. I went through an entire medical encounter. It was the first time meeting the guy. I asked him about his past medical history, medications, you know, substance abuse. You know, have you ever had Botox? Does he have any neurologic conditions? Every -- all of the screening questions necessary to make sure that I administer that appropriately.

Q. Okay. And did you put that in your letter to the Board?

A. I did.

Q. Okay.

A. Yeah, upon arrival, I completed a series of medical screening questions.

Q. Okay.
A. The inference that I didn't take care of this guy is outrageous.
Q. Okay. All right. So you administered -- how much Botox did you administer?
A. Fifty units.
Q. Okay. And what -- is that standard?
A. That's -- that's pretty standard. It -- most of it comes down to a price point. You can't -- in the state of Nevada, you can't share single-use vials, and so --
Q. Just try to stick to one question. That's okay.
Exhibit 10 is Bradley's email to you. In fact, she talks about one vial should be used on a single patient, which is 50 units. Correct?
A. Yeah. But she didn't really actually cite the law. Right?
Q. It's okay.
A. Okay.
Q. Just try to stick to my question. Okay? I know you have been waiting on this for years.
Do you have -- was the vial kept in a safe place?
A. Temperature controlled. It can be at room

temperature for Xeomin.

Q. For how long?

A. You know, they have expiration dates on them.

Q. Okay. Do you have a copy of the actual vial?

A. I have a copy of the -- I have a picture of the actual vial, and I have a picture of the lot number.

Q. Okay. To your knowledge, were we ever asked to provide any of that to the Board after -- listen, we understand they asked in that initial letter. Right?

A. Yep.

Q. We understand that. Okay. Was there ever any follow-up on that?

A. No, there wasn't.

Q. Okay. Did you have any reason to think that that was still being pursued?

A. No, I didn't. I mean, I --

Q. All right. Okay. You had -- you took notes. You had a copy of the vial. You still have all that. Correct?

A. I still have it.

Q. And it can be produced, if necessary,

although, it's been years now. Right?

A. Yeah, it's been a couple of years.

Q. Okay. And I'm going to digress for a minute. You were asked about what's timely. Ms.~Bradley was asking you all kinds of hypotheticals.

You don't really think it's timely to give medical records two years after treatment, do you?

A. No. Personally, I don't.

Q. Okay. That's -- she was asking you personally what's timely? Is timely within 48 hours, as Ms. Elmquist testified to?

A. I mean, it depends on what it is. If it's the emergency department, I try and get it done within the day. Why? Because all of those details are pertinent.

This is a Botox case that routinely happens.

Q. You I want you to focus just on the question. You're trying to anticipate why people asking, and that's -- that can result in confusing responses, because I heard you say that timely could be two years, and I don't think that that's what you really meant.

You personally -- I think you were

referring to this case because you have medical records. Right?

A. Um-hmm.

Q. Okay. Timely means timely; right?

A. Timely, for me, is the same day.

Q. Same day.

A. I don't like to leave charts.

Q. Right. Did you -- what is an EMR?

A. EMR is an electronic medical record program or system on the computer.

Q. And you were not an employee of the med spa. Correct?

A. I was not, no.

Q. Okay. You didn't have access to the EMR. Right?

A. No, I didn't.

Q. Okay. Did you try to gain access and upload records and all that?

A. Well, we had a -- we had a lengthy conversation -- I had -- I had a lengthy conversation with the med spa regarding this particular -- care of this particular patient and what needed to have --

Q. Okay. And you don't know what their records are. Right?

A. No clue.
Q. Okay. All right. There was an implication that this patient may not have provided consent. This patient was actually begging you to do this. Correct?
A. Absolutely.
Q. Okay. And you, against your better judgment, brought him in to the ER facility and administered the Botox. Correct?
A. Correct.
Q. You have --
A. Moreover, he offered payment in the amount of $2,000, and I declined it.
Q. You did this -- that was going to be my next question. You did not charge him for this. Correct?
A. I did not.
Q. You never received any payment for it?
A. Never.
Q. You did violate North Vista's policy and you were terminated. Correct?
A. Correct.
Q. And they told you you were terminated for violating policy. Correct?
A. Yeah. Their word usage paraphrased,

absolutely. Yeah.

Q. This gentleman came back into the ER while you were working. Right?

A. Correct.

Q. Did you assist in his care?

A. I did.

Q. Did you assist in intubating him?

A. Yeah. I was right there when -- when Dr.~Clark was intubating. Absolutely.

Q. Were you communicating with Dr.~Clark the whole time?

A. Absolutely.

Q. Did you tell her exactly what had happened?

A. Exactly to the T.

Q. She asked you about administering Botox in various locations, and her questions were hypotheticals about whether locations matter.

The administration of medical services have to be done in a medical facility. Correct?

A. Correct.

Q. Is that why you didn't do it in the parking lot?

A. Correct.

Q. Would you administer Botox in a cattle

barn?

A. Probably not, no.

Q. Okay. There are locations where you would not do this. Correct?

A. Correct.

Q. So location matters; correct?

A. It does.

Q. And you can administer medical treatment in a location that could result in harm to the patient. Right?

A. Say that again.

Q. You could do something that may expose the patient to infection, or there could be a location that was either against statute or against your ethics. Correct?

A. Correct.

Q. Did you feel that the ER was a safe space?

A. So practically, medically, yes. Yes. Ethically, no.

Q. You admitted to the Board that you made a mistake?

A. I was very transparent with them.

Q. You were very apologetic. Correct?

A. Absolutely.

Q. You were very upset. Correct?

A. Absolutely.
Q. You lost your privileges at the hospital. Correct?
A. Correct.
Q. This patient did not sustain an adverse reaction because of your care. Correct?
A. Correct.
Q. At the time, you had already lost your job at My Shape Lipo because of the other Board complaint. Correct?
A. Correct.
Q. When you -- and I keep saying "Botox," if you want to use a different word, but that's just because Botox is what I say.
When you administered the Botox, were you acting within your scope of practice?
A. I believe I was acting within my scope of practice. My skills, capabilities, knowledge as of -- the training, as to the deliverance of that medication. I mean, if -- if a registered nurse who has a significantly less education than I do, why would I -- why -- would why would I presume that I, having been trained and done other serious procedures, not be able to administer Botox?
Q. You're charged with violating NRS

633.061E, which is practicing or offering to practice beyond the scope permitted by law. Was this beyond what was permitted by law?

A. No.

Q. Or performing services which the licensee knows or has reason to know that he or she is not competent to perform. Did you have any reason to think you were not competent to perform?

A. No.

Q. Okay. If Andy Sheep thought you weren't competent to perform, would he continue meeting with you to pursue additional business ventures with you?

A. No.

Q. Okay.

A. He wouldn't.

Q. And in Nevada, the onus is on the supervising doctor --

A. So you think that. But in our other case, they don't seem to think that.

Q. Okay.

A. Sorry.

Q. By law, the onus is on the supervising doctor. Correct?

A. Correct.

Q. No charges were brought against Andy

Sheep, were they?

A. Nope.

Q. Didn't you have a meeting with his -- you were asked about keeping in communication and make phone calls and all this stuff. Did anybody ever ask you before filing this Complaint about any of that?

A. Nope.

Q. Are there allegations in the Complaint that are just factually wrong?

A. Absolutely.

Q. You kept in communication with Dr.~Sheep; correct?

A. Correct. I can show text messages. I can show text messages with Dr.~Sheep and the med spa owners, all three of us in a group text, coordinating times to meet.

Q. This patient was transferred to Sunrise. Correct?

A. Correct.

Q. And we don't know what happened. We do know that he had a number of other physical potential problems. We don't know what happened. But he was transferred to Dr.~Sheep. Right?

A. Correct.

Q. Dr.~Sheep knew --
A. He was the accepting position for transfer. Absolutely.
Q. Did he ever call you up and say, Kayle, what the hell did you do?
A. We talked about it. Absolutely.
Q. Okay.
A. Even though the Court doesn't know what happens, I'm sure Ms.~Bradley and Ms. Contine do. But they didn't introduce the patient records at Sunrise. I have an idea because I went and I followed up with them.
Q. I didn't ask you. Just wait for a question, okay?
The next day, did you go visit this patient?
A. I don't know if it was the next day or a couple of days after. I don't remember, but I did go visit the patient. Absolutely.
Q. You met with him?
A. Yep.
Q. Talked to him?
A. I discussed with him, yep.
Q. Did he -- was there ever any indication that he had a reaction because of the Botox?

A. No.
Q. Wanted to continue to do business with you. Correct?
A. Correct.
Q. You refused. Correct?
A. Oh yeah. Absolutely.
Q. This was -- this individual was what was referred to as a "VIP". Right?
A. Yep. Absolutely.
Q. Wealthy?
A. Yep.
Q. High-roller type?
A. Absolutely.
Q. He wanted you to sign an NDA. Right?
A. Yep.
Q. At Sunrise, was this patient placed on a psychiatric hold?
A. He was.
Q. Did the patient ever file suit for malpractice?
A. He did not.
Q. Did anybody from the Board ever interview this patient, to your knowledge?
A. Not to my knowledge. I don't have any information on that.

Q. Did anybody from the Board ever interview Dr.~Sheep?
A. Not to my knowledge.
Q. You've seen a number of communications between my office and Ms. Contine and Ms. Bradley discussing your other case and this case together. Correct?
A. Correct.
Q. Okay. Is it your understanding that the Board insisted that this hearing be combined with the other hearing?
A. It was.
Q. Now last -- well, before we get to that.
I understand that it's your testimony that you kept records and that you kept photographs and you kept photographs of the vials. I understand that. Right?
A. Um-hmm.
Q. But you concede that you violated the recordkeeping statute?
A. Yeah, I absolutely violated the records statute.
Q. And we've conceded that for over a year. Correct?
A. That was from my initial email I conceded

that.

Q. The Board -- you saw the exhibits in this case. Right? The Board had sent letters to gather information in the phone. Correct?

A. I saw -- yeah, I've seen all of the exhibits. Yes.

Q. And it looks like, if you look, for example, Exhibit 7, the medical records, it looks like they were -- I'm sorry, Exhibit 8. They were received by the Board in April of 2023. Actually, we can't say that, but that's when they were printed.

Presumably, the Medical Board had the records in 2023. Correct?

A. Yep.

Q. Okay. In January of 2024, did the Board file a complaint related to this case?

A. January of 2024?

Q. They did not. Correct?

A. No. No.

Q. They said that they're going to make it go away. Correct?

A. Correct.

Q. In February of 2024, the Board didn't file a complaint in this case, did they?

A. No.
Q. Okay. Sometime in the spring, actually, it was in January 2024, you were set for hearing in your other case. Correct?
A. Correct. We went to hearing in the other case --
Q. Hold on. Just answer my specific question. I don't mean to be rude. I know you have a lot to say. I understand that.
We were set for hearing, correct, in the other case?
A. Correct.
Q. And the Board still didn't file a complaint in this case. Correct?
A. Correct.
Q. Okay. In May of 2024, we went to a hearing in front of Hearing Officer Whitman [sic]. Correct?
A. Correct.
Q. And in his findings, did he dismiss --
MS. BRADLEY: I'm going to object to testimony about an unrelated hearing in a different matter. I don't know how that's relevant to what we're doing today. And testimony -- like, things that happen on that day just aren't relevant.

MS. ZASTROW: It is relevant because you have accused my client of not cooperating and of various states of mind, and I'm trying to establish why he did or did not do and also establish the motive of the Board, which goes to potential discipline against him.

HEARING OFFICER HALSTEAD: So I don't think the motive of the Board is at issue. Unless you procedurally want to make a record to take issue with that in another forum.

With regard to what happened in the other case, I also don't think that is relevant with regard to any of the allegations in this case.

But I will give you a tiny, tiny bit of leeway. I am familiar with the background of this case, obviously, because I've had to make rulings and deal with the other matter, so I'll let you address that slightly, but I don't want to go too far afield down this road.

MS. ZASTROW: I understand. And I know you need to hear what's important for your findings and conclusions, and I'm trying -- that's what I'm trying to do. And some of this can be reserved for argument.

BY MS. ZASTROW:

Q. Mr. McCleve, that case was dismissed and is now on appeal. Correct?

A. Correct.

Q. It was only after that case was dismissed that this case was then submitted to the review panel --

MS. BRADLEY: I'm going to object --

BY MS. ZASTROW:

Q. -- (indiscernible) consideration of findings. Correct?

MS. BRADLEY: She is misstating --

THE WITNESS: Correct.

HEARING OFFICER HALSTEAD: Go ahead, Ms.~Bradley.

MS. BRADLEY: She is misstating the status of the other case. That is not relevant. Mr. Woodman recommended that it be dismissed. It has not been dismissed, and only the Board can dismiss the case. And she knows that.

HEARING OFFICER HALSTEAD: Okay. I'll tell you what. I'm just going to make a record on that, and then we're going to move on from this. And if I misstate what's going on with that case, someone can correct me.

I am involved with that case because it fell to me after Mr. Woodman ceased being a hearing officer. Mr. Woodman dismissed that case on the record, but never dismissed it in writing. And then that matter fell to me. And I met with the parties and said, "What are we doing with this case?"

And the status of what happened after that meeting and the order that I issued are now the subject of a writ at the Nevada Supreme Court, as to which the Supreme Court has asked for an answer. That is the status of that matter.

Did I misstate that, Ms.~Bradley?

MS. BRADLEY: I believe that Mr. Woodman did say that he's going to recommend that the matter be dismissed. I'd have to look at the transcript to say that. I can tell you, statutorily, he is not able to dismiss the matter; only the Board can do that. He can make recommendations.

HEARING OFFICER HALSTEAD: Okay. Thank you for that clarification.

Ms.~Zastrow, anything you want to clarify about what I just stated?

MS. ZASTROW: Everything you just stated is 100 percent accurate. He stated on the record that the case was dismissed.

The only -- none of that really matters. I do accept your recitation of that. There's a further point here that I'm getting to.

HEARING OFFICER HALSTEAD: And what is that?

MS. ZASTROW: This case was filed after Mr. McCleve prevailed on the other case. That's the point.

HEARING OFFICER HALSTEAD: Okay. So I don't recall if Mr. Woodman said he was going to recommend dismissal or if he purported to dismiss the matter. I don't remember either way.

But with regard to the timing, Ms.~Bradley, I -- this -- I mean, this was -- I mean, the records speak for themselves. This matter was filed on November 22, 2024, and I don't recall the date of Mr. Woodman's --

MS. BRADLEY: It was --

HEARING OFFICER HALSTEAD: . the incident with Mr. Woodman was prior. Correct?

MS. ZASTROW: May 30th.

MS. BRADLEY: May of 2024. I can look at my calendar to get exact date.

HEARING OFFICER HALSTEAD: So the record has been made as to timing, Ms. Zastrow. Can we

move on from this?

MS. ZASTROW: Yes. It was May 30, 2024. And if it would be helpful to you, Mr. Halstead, I can give you the transcript. He did state on the record that it was --

HEARING OFFICER HALSTEAD: I have the transcript. But again, it's -- you know, I've ruled on that. That's a separate case.

MS. ZASTROW: I agree.

HEARING OFFICER HALSTEAD: That doesn't have anything to do with the merits of this matter.

MS. ZASTROW: It -- it --

HEARING OFFICER HALSTEAD: It has to do with the Board motivation. I understand that. I understand your argument. But I still have to decide on the merit.

MS. ZASTROW: I absolutely respect and understand that. And I'm not intending to waste anybody's time. I also think it goes to discipline, if any.

BY MS. ZASTROW:

Q. Mr. McCleve, when you received this Complaint, what was your reaction?

A. I was blown away. Blown away. I mean, getting the initial investigative letter, I

understood was -- had to come out by Don Andreas, but the actual allegations, you know, I -- it was -- it was gut-wrenching. Like, you know, they've been -- they basically, in their first, you know, settlement talk agreement that they proposed, they were inferring that it wasn't a big deal.

And now hearing Ms.~Bradley talk about how it's a public safety matter, however many years later, well, if it was really about public safety, then why not just write me a letter and say stop doing that. You know?

That's -- that's what I don't quite understand with this. I don't understand this whole process. If you don't like what somebody's doing, write them a letter and make sure they're in compliance.

The role of the Board is remediation. They have absolutely gone punitive on me. Sorry. It was gut-wrenching.

Q. Let's talk about -- I understand.

Let's talk about real quick --

MS. ZASTROW: And my apologies, Your Honor, for jumping around a little bit. That's just because of my notes and because Ms.~Bradley went first, so I'm trying to do direct in different

order. So jumping around a little bit.
BY MS. ZASTROW:
Q. You talked about things that you're able to do as a PA in general. Correct?
A. Yes, I did.
Q. And Nevada law says that you're able to do whatever your MD allows you to do. Correct?
A. Correct.
Q. Okay. You were talking about not having residency, and I -- correct me if I'm wrong, but I think your point was that a PA's sort of residency is learning from their MDs. Correct?
A. Correct.
Q. Okay. I've heard doctors -- my dad's a doctor -- say see one -- or learn one, see one, do one, something like that. You've heard that?
A. Yep. Absolutely.
Q. Did I say -- what's the terminology?
A. See one, do one, teach one.
Q. Okay. And does that happen when you're working for an MD?
A. Absolutely. All the time. Not just -- not just limited to MDs; other PA and other MPs that have more knowledge or training. You're always consistently learning from other peers and other

people. It doesn't have to necessarily be an MD or a DO. They do not own the proprietary rights to medicine.

Q. Okay. And you're governed by what you can do by Nevada law, and that includes the administrative code. Correct?

A. Correct.

Q. Okay. And you're able to do whatever you're training, under an MD, as long as that supervising agreement has been submitted to the Board allows you to do. Correct?

A. So just to clarify, I can do whatever my MD tells me I can do. The onus is on him to define his scope of practice. Okay?

If I learn -- if I learn, you know, a certain, you know, technique in this particular aspect of medicine because I have a supervising doc over here that works in this medicine, and yet I come over to this one, and this doctor does not have that in his scope of practice, I have to operate according to the actual MD.

Q. And you were authorized by Dr.~Sheep to engage in what he called "boutique medicine." Correct?

A. Boutique medicine. Boutique medicine, the

definition: Botox, fillers, skin treatments, hormone replacement therapy.

Not medicine in the general internal medicine sense; more of a cosmetic elective-type part.

Q. And I want to talk about that because you had been at My Shape Lipo and you were doing tumescent liposuction. Correct?

A. Correct.

Q. Dr. Sheep wanted nothing to do with liposuction anymore. Correct?

A. After the Board investigated him --

Q. Can you just --

A. Yep. Absolutely, he did not want to engage in liposuction.

Q. Because the Board came after him. Right?

A. Absolutely.

Q. Okay. So he wanted to enter into what you are calling "boutique medicine," which is injectables, Botox, hormone therapy -- I'm sorry. Explain it again.

A. Yeah. Hormone therapy, you know, skin treatments, weight loss. You know, everything to make you -- your appearance better and make you feel better and optimize your health. Peptide therapy,

PRP, stem cells, we were going to get into all of that.

Q. Making -- your patients are much happier, right, they love you?

A. Oh, my liposuction patients are -- I still get phone calls from them.

Q. I know. And you're not doing lipo anymore. Right? But let's -- you are entering into -- you wanted to enter into a practice area that was, let's say, much less risky. Correct?

A. So less litigious. I guess you could say that, but --

Q. I said -- you're saying "litigious," meaning you don't get sued as much. Correct?

A. Correct.

Q. That wasn't my question. It's not as risky as working in the ER. Right?

A. Correct.

Q. Okay. Have you ever seen a patient die?

A. Yep. Absolutely.

Q. What's the likelihood of that happening in boutique medicine?

A. Very low, very low. You can -- it can occur. Like, I mean, you know, an infection can lead to a systemic infection. I get it. But, like,

it's relatively -- not nonexistent.

Q. Okay. You've seen a lot of trauma in the ER. Correct?

A. A lot. Absolutely.

Q. It has affected you emotionally. Correct?

A. Absolutely.

Q. Okay. You said that you've intubated a patient. Right?

A. Absolutely.

Q. You did that yourself. We heard Ms. Elmquist talk about she did that with the team. You actually have done that procedure. You're the one doing it, you're the lead. Right?

A. So when I work in emergency medicine in a metropolitan area like Vegas, there's typically a doctor there.

I worked in a community-access hospital where I was the only one on, so I had to do everything. I had to order the meds, I had to intubate, I had to keep -- maintain the meds for sedation until we prepared the patient for transfer.

Q. Okay.

A. So Ms.~Elmquist's scope of practice is a little different than mine if she's just working in a metropolitan area.

Q. All right. I think we've covered this, but just for the record, the authorized services is exactly what Ms.~Bradley said, which is NRS 63271. I don't know that that appears in the Complaint. I would have to look again.

But it talks about you're authorized to do what your MD says you could do. Right?

A. Absolutely.

Q. And what you're trained to do. Correct?

A. Absolutely. Probably one of the most gut-wrenching, you know, harrowing procedures that I've had to do in my career is drain a retrobulbar hematoma. It's a -- bleeding back behind the eye that compresses the optic nerve. I had to put a needle into the eye socket and actually drain it. I think that's a little more complicated than a paralytic.

Q. You were asked about Dr.~Sheep's qualifications. I think the question should be is what did you understand his qualifications to be? Because that's what Nevada law requires, is your understanding.

With respect to boutique medicine, was he qualified?

A. My understanding is Dr.~Sheep said, "Kale,

I am proficient at this. You can work under my license and provide these things." We had a very lengthy discussion about our business model and what type of procedures and what type of clientele we were going to go ahead and intervene on.

Q. Okay. You were asked about -- it seemed like you were being asked as to why you did not provide the Board your credentials. Do you remember that line of questioning?

A. Sure. I guess there are a couple of classes --

Q. Hold on.

A. Okay.

Q. Do you remember that line of questioning?

A. Yep, I do.

Q. To your knowledge, had that information been provided to the Board already, potentially, maybe under the context of the other matter?

A. Absolutely.

Q. Which the Board was insisting be combined. Correct?

A. Absolutely.

Q. Okay. To your knowledge, was your -- let's see here -- master's of physician's assistant studies degree, was that provided to them?

A. It was at one time, absolutely.
Q. Other training certificates, were they provided?
A. So probably not the training certificates. I know specifically they have the tumescent liposuction one.
Q. Okay. Okay. Gotcha. I'm looking at a disclosure from the other case.
Do you have any reason to believe or did you have any reason to believe that you had not complied with the requested information from you?
A. I felt that I went above and beyond in my response. Moreover, I feel like I went above and beyond in the care of that patient, which is what we really should be focused on.
Q. After you met with the patient in his room, did you contact the manufacturer of the paralytic?
A. I did.
Q. Did you tell the Board that you did that?
A. No, I did not. I had no longer --
Q. You actually did.
A. Oh, did I? In my -- oh, yeah. In my letter, I mentioned that. Yeah, you're right.
MS. ZASTROW: No one's read this letter

into the record. And, Ms.~Halstead, I would just ask you what your preference would be, if we could just submit it? It's been admitted. And I would ask that you read it, or we can have the witness read it into the record. It contains a --

HEARING OFFICER HALSTEAD: It's admitted. There's no reason to read it on the record. It is part of the record as being admitted.

MS. ZASTROW: Understood. I just don't want to -- I just want to make it clear that I'm proffering the 100 percent content of this letter for your consideration.

BY MS. ZASTROW:

Q. Kayle, look at Exhibit 2 on page 4 -- I'm sorry, page 5. That's your email.

A. Okay.

Q. You said there, "I contacted the manufacturer of the paralytic." Right?

A. Yep. There we go.

Q. You also said you contacted two well-known neurologists. Correct?

A. Absolutely.

Q. You also told them that North Vista had reported you to the National Practitioners Database. Correct?

A. Absolutely.
Q. And that's -- they're required to, right, because the patient had an adverse reaction?
A. Because there was a loss of hospital privileges.
Q. I apologize.
A. Yep.
Q. There was no adverse reaction.
They were required to report it because it was an incident. Correct?
A. Yeah.
Q. And you had violated their rules. Right?
A. Correct.
Q. You also told the Board that you went in front of the medical executive committee in North Vista, and there was a full hearing on this. Correct?
A. Correct.
Q. You said you expressed sorrow, empathy, acknowledge your actions. Right?
A. Correct.
Q. You said you violated the code of ethics by treating the patient on the grounds of North Vista. Correct?
A. Correct.

Q. You said, "I have suffered a complete loss of income and damage of reputation," because of your decision to inject him at North Vista. Correct?

A. Correct.

Q. You said that you've worked every day for the previous nine years, to the best of your ability, for appropriate patient care. Correct?

A. Correct.

Q. [redacted]

Q. Yeah. I maybe I worded that wrong. You never had any discipline?

A. No, no discipline.

Q. As Ms. Elmquist said yesterday, we all know in Nevada, patients can make complaints whether they're founded or unfounded. But you had never had any formal complaints filed against you. Correct?

A. No.

Q. It wasn't until you transitioned into cosmetic procedures that you were the recipient of two Board complaints. Correct?

A. Correct.
Q. Are you aware of a number of other MDs and PAs that have been the recipient of formal Board complaints that work in cosmetics?
A. Absolutely.
Q. Based on your communications with the Board, is the Board trying to insist that you only work under the supervision of a plastic surgeon?
A. They are.
Q. Is there any requirement in Nevada --
MS. BRADLEY: I'm going to object. I don't know that that was said to Mr. McCleve.
That, again, is going back to settlement conversations and what may or may not have been in a settlement agreement. There's been a lot of conversation about that. It's not admissible, it's not relevant, and I guess I just I really want to keep the limit of references to that in the record limited.
MS. ZASTROW: Your Honor, my response to that is, number one, there's no rule that summary of the cases is not admissible. There's a rule of evidence, which can be relaxed.
This goes to motive and not necessarily the acceptance or rejection of those terms.

HEARING OFFICER HALSTEAD: So both parties have gone into settlement negotiations more than I would --

MS. BRADLEY: I've not asked anything about settlement discussions. And there's been -- I mean, the record is clear that no formal agreement was ever put before the Board because it's not on any meeting agenda, and that's where a settlement agreement would be a public thing.

HEARING OFFICER HALSTEAD: Well -- and I agree with that. But, you know, I can't -- again, it doesn't go to the merits, and it doesn't help me.

But, Ms. Zastrow, if you want to spend time on that, again, I will let you make your record. I don't think it's up to me to limit the record you feel you need for other purposes when it can only be made in this proceeding. But it doesn't go to the merits.

MS. ZASTROW: I believe it goes to discipline, Your Honor.

HEARING OFFICER HALSTEAD: Well, I don't think that particular question helps me with discipline, but you can ask it and move on.

MS. ZASTROW: Yeah, I was going to say, one question in a vacuum may not, but a series of

questions is designed to get to somewhere. And that's what I was trying to do, Your Honor.

But if you don't think it helps you, I don't want to waste your time.

HEARING OFFICER HALSTEAD: Thank you.

Ms.~Zastrow, while you're collecting your thoughts, Ms.~Bradley, didn't you say you had to be somewhere at noon yesterday?

MS. BRADLEY: I do. And it is ten minutes till. I can go probably five more minutes, and then I won't be available again until 1:10 p.m.

HEARING OFFICER HALSTEAD: Ms.~Zastrow, do you want to continue or do you want to take a break at this point?

MS. ZASTROW: I think we can take a break. Then I'll be able to organize and and wrap up quicker.

HEARING OFFICER HALSTEAD: Okay. And then you said -- what time could you be back, Ms.~Bradley?

MS. BRADLEY: I should be back by 1:10.

HEARING OFFICER HALSTEAD: Okay. So if we start at 1:15, does that work for everyone?

MS. BRADLEY: It does. Thank you.

MS. ZASTROW: Yes.

HEARING OFFICER HALSTEAD: Okay. All right, then. We'll take our break, and we'll be back at 1:15.

(Lunch recess from 11:50 a.m. to 1:16 p.m.)

HEARING OFFICER HALSTEAD: All right. We're back on the record In the Matter of Charges of Complaint Against David Kayle McCleve, PA-C, case number 24-42281-1. The parties are present. Ms. Bradley is present for the IC. Respondent, Mr. McCleve, is here with counsel, Ms.~Zastrow.

We had left off with Ms.~Zastrow questioning her client.

And, I remind you, Mr. McCleve, that you're under oath.

Go ahead, Ms. Zastrow.

MS. ZASTROW: Thank you.

Kayle, if you can unmute your mic. And we'll wait for Ms.~Bradley to come back, I guess.

MR. CUMINGS: She's here. She's just turning on her fan.

MS. ZASTROW: Okay. All right. No problem.

Your Honor, I just have a couple more questions. I'll try to be as quick as possible.

BY MS. ZASTROW:

Q. Mr. McCleve -- I'm calling you Kayle. You go by Kayle, right, your first name is David?

A. I go by?

Q. You go by "Kayle," like you said?

A. Um-hmm.

Q. Kayle, can you please turn to Exhibit 6?

A. Okay.

Q. Actually, before that, can you turn to Exhibit 5. Can you see Exhibit 5?

A. Uh-huh.

Q. Is the first time you saw that when I sent it to you?

A. Yep.

Q. And that's a letter to Dr. Harris. Correct?

A. Um-hmm.

Q. Looks like they're asking him for information as a part of their investigation?

A. Um-hmm.

Q. Dr.~Harris was your supervising doctor for Vista, right, working in the ER?

A. When I am at North Vista, Dr.~Harris is my supervisor.

Q. Gotcha.

And that letter is dated November 20, 2023. Do you see that?

A. Yep.

Q. Okay. If you could turn to -- no. Apologies. I was reading something in that letter I hadn't seen before.

If you could look at Exhibit 6, please.

A. Gotcha.

Q. Looks like a response from Dr.~Harris. Right?

A. Yep.

Q. Approximately seven or eight months after the Board sent him a request. Right?

A. That's what it appears, yeah.

Q. Have you read this letter?

A. I have.

Q. If you go to the first -- the answer to question number 1, the last sentence, can you read what that says?

A. "McCleve also works outside of the emergency department under the supervision of a different physician, and the specifics of those activities have been and continue to not be fully known or disclosed to myself."

Q. Right. So Dr.~Harris knew that you had a

side gig. Right?
A. He did.
Q. And he knew that you had another supervisor. Right?
A. He did.
Q. And we've all conceded that that is not uncommon. Correct?
A. Correct.
Q. You don't make as much money as an MD. Right?
A. Nope.
Q. All right. So side gigs are, again, not uncommon. Right?
A. Correct.
Q. You have the full weight and responsibility of MDs. Is that fair?
A. I would say so. Maybe even more so. Maybe even more so because the scrutiny is, obviously, a lot more as --
Q. Right.
A. -- I know, with doctors here today.
Q. With a quarter of the pay or something like that?
A. Yep, about that. About a third.
Q. All right. In the -- he's answering

question number 2.

If you go down to sort of the middle of that paragraph, do you see the sentence that begins "The activities of Mr. McCleve were adequately supervised"? Do you see that?

A. I see it.

Q. I'm going to read that and you tell me if I'm reading it correctly. He says "The activities of Mr. McCleve" -- and by the way, he's talking about the day of the incident. Correct?

A. Correct.

Q. He says:

"The activities of Mr. McCleve were adequately supervised by our emergency physician medical staff. But unfortunately, Mr. McCleve independently made a unilateral decision in a nontraditional manner."

Right?

A. Um-hmm.

Q. "In order to render non-credentialed treatment" -- what did he mean by "non-credentialed treatment"? He meant non-credentialed by Vista medical. Correct?

A. Correct.

Q. -- "to an unregistered patient using North

Vista facilities." Right?

A. Correct.

Q. Okay. Nowhere in that sentence does he say anything about the treatment being rendered below any standard of care. Correct?

A. Correct.

Q. He says you violated North Vista Hospital protocol. Correct?

A. Correct.

Q. And we've all -- you told the Board that two years ago. Right?

A. I did.

Q. They were aware of that you were terminated. Right?

A. I was very open with all of that.

Q. But yet Dr.~Harris still says that he was your supervisor that day. Right?

A. He does.

Q. He takes responsibility for you that day, doesn't he?

A. That's -- according to the word usage that he puts it, it sounds like -- it sounds so.

Q. Right. So it's fair to say that that day you were performing under two different scopes of your expertise, one being the boutique medicine.

Right?

A. Um-hmm.

Q. And Dr.~Sheep was your supervising physician for that?

A. Right.

Q. And you were also -- you were utilizing the ER facilities. Right?

A. Absolutely. I was utilizing space in the ER.

Q. You were utilizing space in the ER.

You didn't take him out into the Nevada desert. Right?

A. No, I did not.

Q. Dr.~Harris says that -- he doesn't say that there was any adverse reaction. Right? I believe we have established that. Right?

A. Correct.

Q. And a minute ago when I paused, if you look back at this letter to him, Exhibit 5, one of the questions he's asked is complications arose, and he suffered an outcome. Do you see that?

A. Yeah. Number 2?

Q. Yeah. They're asking him if he suffered an adverse -- that's one of the allegations that was against you. Right?

A. Correct.
Q. And he does not substantiate that, right, because the patient did not sustain an adverse outcome. Correct?
A. Yeah, he did not comment on the adverse event.
Q. Well, he did.
A. He said "There was appropriate medical care that was" --
Q. Exactly.
A. -- "standard," yep.
Q. And those are his words. Correct?
A. Correct.
Q. Now, Ms.~Bradley was asking you questions on her cross or direct, whatever, about trying to figure out who was your supervising doctor. Do you recall that line of questioning?
A. I do.
Q. Okay.
A. She -- she utilized Andy Sheep and conflated Andy Sheep's privileges at North Vista when that's -- that's not the case.
Q. Okay. So the premise of the question was a little bit confusing to me and maybe to you as well, so let me see if I can help us understand, and

you tell us. And let's use an example.

Dr.~Harris, your ER doctor supervisor -- right?

A. Yep.

Q. On the day that this incident happened with Patient A, was Dr. Harris there?

A. No, he was not.

Q. He was not at the hospital. Correct?

A. He was not.

Q. Okay. How many patients did you see that day, excluding Patient A?

A. On average?

Q. No. That day. Just approximately that day, how many patients did you see?

A. Probably 25 to 30 patients.

Q. Before you saw a patient, did you pick up the phone and call Dr. Harris and ask for his permission to see the patient?

A. No. We don't have --

Q. Okay. You didn't?

A. -- it's implied that we have -- okay. Go ahead.

Q. No. That's okay. And, again, I'm not trying to be rude. We're just trying to have a clear record. Okay?

A. Sure.
Q. And again, I know this is stressful for you, but --
A. So the answer is, I do not have to call Dr. Harris every time I pick up a patient, make a medical decision, or intervene on any patient in any way.
Q. So --
A. Unless -- unless I feel it's outside of my scope and he needs to be made aware of it.
Q. Or you have a question, maybe?
A. Typically, yeah. Yeah, absolutely.
Q. So let's make up -- let's say, patient was seen at -- just purely hypothetical. Let's say a patient came in and was having an asthma attack. Or let's say a patient came in and was in SVT -- you know what that is, right, we talked about it the other day?
A. Absolutely. Super ventricular tachycardia.
Q. Right. And you utilize the vasal maneuver on that patient?
A. So I went through the entire protocol. Vagal measures all the way to medications to cardioversion.

Q. Okay. So, hypothetically, you utilize a maneuver to take that patient out of tachycardia. Right?
A. Correct.
Q. And you may have even ordered medications. Correct?
A. Adenosine. Absolutely.
Q. You did all that without calling Dr.~Harris and getting his permission?
A. I was operating under the scope, according to the agreement that I had with Dr.~Harris.
Q. You had the implied -- he was your supervisor, you had his implied authority. Correct?
A. Correct.
Q. Now, you were employed -- your employer was North Vista. Right?
A. No. So the employer is Superior Emergency Physicians.
Q. But you were not employed by Dr.~Harris?
A. Dr.~Harris is the owner of Superior Emergency Physicians.
Q. Oh, okay. Sorry.
A. And he was also my supervising doc, yes.
Q. Okay. That's my mistake.
Could you be employed by someone who's not

your supervising physician?

A. Absolutely. Happens all the time. There's big groups -- big ER groups like Envision, Team Health.

Q. Right.

A. All of these are big, big companies.

Q. So --

A. -- (indiscernible) the business, and we have supervising docs that work for them that we work under their scope of practice.

Q. So that day at the ER, Dr.~Harris isn't there, you're seeing patients, you're not calling him, you're not asking for permission, how do you know -- I mean, how know do you know how to do your job? You know because of your training, your skill, your education, and your experience. Correct?

A. Correct.

Q. Okay. And you know you can get them on the phone if you need to. Correct?

A. Correct. For example, if a patient came in that was a trauma patient and they needed a thoracotomy, I am not proficient at that.

However, whatever doctor does them and I watch them and I feel like I can do it and they give me the appropriate green light or privilege, I feel

like I could learn how to do a thoracotomy.

Q. What is a thoracotomy?

A. That's where you open up the, you know, the chest cavity. If there's, you know, blood in and around the heart, sometimes you've got to manually decompress that.

Q. And so you could do that if you -- your -- if Dr.~Harris trained you to do it. Right?

A. Absolutely.

Q. You don't need to call up the Board and ask their permission. Right?

A. No, I do not need to call the Medical Board and ask permission. And nor do I need to call the Medical Board and add that to my list of services, according to my understanding.

Q. Right. Well -- okay. And again, Dr. Harris takes full responsibility for the supervision of you that day in the ER.

Now, with respect to Dr.~Sheep, you were asked if he gave you permission to do the injectable that day on Patient A. Do you recall that line of questioning?

A. I do.

Q. Did you need his permission?

A. I did not.

Q. Under Nevada law, did you need his permission?
A. I did not.
Q. You had his implied permission and authority. Correct?
A. Correct.
Q. Okay. You didn't pick up the phone and call him. Right?
A. Correct, I did not.
Q. In the same way that you didn't pick up a call Dr.~Harris the same day when you saw every other patient. Right?
A. Correct.
Q. Okay. You violated hospital protocol. Right?
A. Hospital policy, absolutely.
Q. You've admitted ad nauseam, to the point of being mentally stressed, that you made a horribly bad decision that day. Right?
A. Absolutely.
Q. You lost your privileges?
A. Very tragic.
Q. Very tragic. And at the same time, you had lost your job at My Shape Lipo because of the other Board investigation. Correct?

A. Correct. I would go so far as to say it's tragic for the people that live in and around and utilize North Vista emergency department, because I considered myself to be a very proficient medical provider that was good at his job.

Q. Did you have good -- did you have good feedback from your medical providers?

A. Absolutely.

Q. Did your patients love you?

A. My patients -- I took care of everybody that came into my care with the most appropriateness and compassion.

Q. Have you had patients tell you before that you saved their life?

A. I have. One case in particular happened in, you know, not long ago in an ER in Arizona. A guy went into anaphylaxis, and I had to get him out of the anaphylactic reaction.

Q. Now, you were working in Arizona because you couldn't get a job in Nevada. Correct?

A. Correct.

Q. You did talk to Dr.~Sheep after this happened. Right?

A. I did.

Q. He didn't say to you --

A. Multiple times.
Q. He didn't say to you, you didn't have my authority to do that. Right?
A. He never said that. Never said that.
Q. He was, however, pretty spooked about continuing this business venture. Right?
A. Absolutely.
Q. He was at the investigation --
A. The Medical Board is very, very domineering and powerful. Nobody -- that's the general discourse through medicine. Nobody wants to mess -- quote/unquote, mess with the Medical Board for fear of what they can do.
Q. Is that especially true with boutique medicine?
A. Absolutely. More -- probably more so.
Q. So Dr.~Sheep never said you did anything wrong, other than violating Vista policy. Correct?
A. So Dr.~Sheep and I have a very formal and informal, you know, relationship. And, you know, I think the word usage was, you know, that was stupid. And and my response probably was something along the lines of, Yeah, I know, dude. I'm sorry.
Q. It was stupid in hindsight. Right?
A. Absolutely.

Q. And you knew it was stupid at the time. Right?
A. I did.
Q. You still keep in touch with Dr.~Sheep. Correct?
A. I do.
Q. In fact, when you couldn't get a job in Nevada, he tried to help you get a job out of state. Correct?
A. In Arizona, absolutely.
Q. Dr.~Sheep eventually told you that he wasn't going to move forward with going into business with you. Right?
A. Yeah. Given, you know, the circumstances and his previous involvement with the Board or investigation of the Board for the liposuction, he was -- he was no longer interested in pursuing anything in the cosmetic realm.
Q. So you knew at that time that he was going to withdraw his supervision agreement with you?
A. I did.
Q. And he did?
A. And he did.
Q. And you have not been able to find a supervisor, or you have not been doing cosmetic

since then. Is that right?

A. Correct -- no. No, I take that back. I take that back. Recently I've made a connection with a cosmetic surgeon, and I have been involved in his practice on a very minimal scale.

Q. Right. Okay.

You're currently working in a field that, let's say, you don't really want to be working in. Is that true?

A. Absolutely.

Q. You don't have your dream job, do you?

A. No, I do not.

Q. But you're still helping patients. Right?

A. It's still the practice of medicine, absolutely.

Q. Who's your supervising doctor now?

A. I've got several. Dr. Grover. I think Dr. -- the Tellus Wilby (phonetic). I think there might be a Dr. Fisher. It's a big practice with lots of supervising docs. Lots of -- lots of medical care, different medical care going on, and so I'll have several.

Q. And when you took that job, you did not have any experience specifically with pain management. Right?

A. I had zero experience with pain management or orthopedic surgery of the spine, aside from what I had learned from my previous encounters and in emergency medicine.

Q. They hired you and you're doing the on-the-job training that all physicians assistants do. Correct?

A. Correct.

MS. ZASTROW: Your Honor, I don't have any more questions. I would just reserve the right to ask for surrebuttal, just because I would have called him on direct and now Ms.~Bradley is going to cross, so we can just -- just for the record. Thank you.

THE HEARING OFFICER: Thank you.

Ms.~Bradley?

MS. BRADLEY: Before I ask Mr. McCleve more questions, I did want to put an oral, I guess, request for motion on the record regarding NRS 630.336. There have been some --

HEARING OFFICER HALSTEAD: I'm sorry. Can you -- NRS --

MS. BRADLEY: 630.336.

I just want to ask, and hopefully Ms.~Zastrow will agree, that references -- I believe

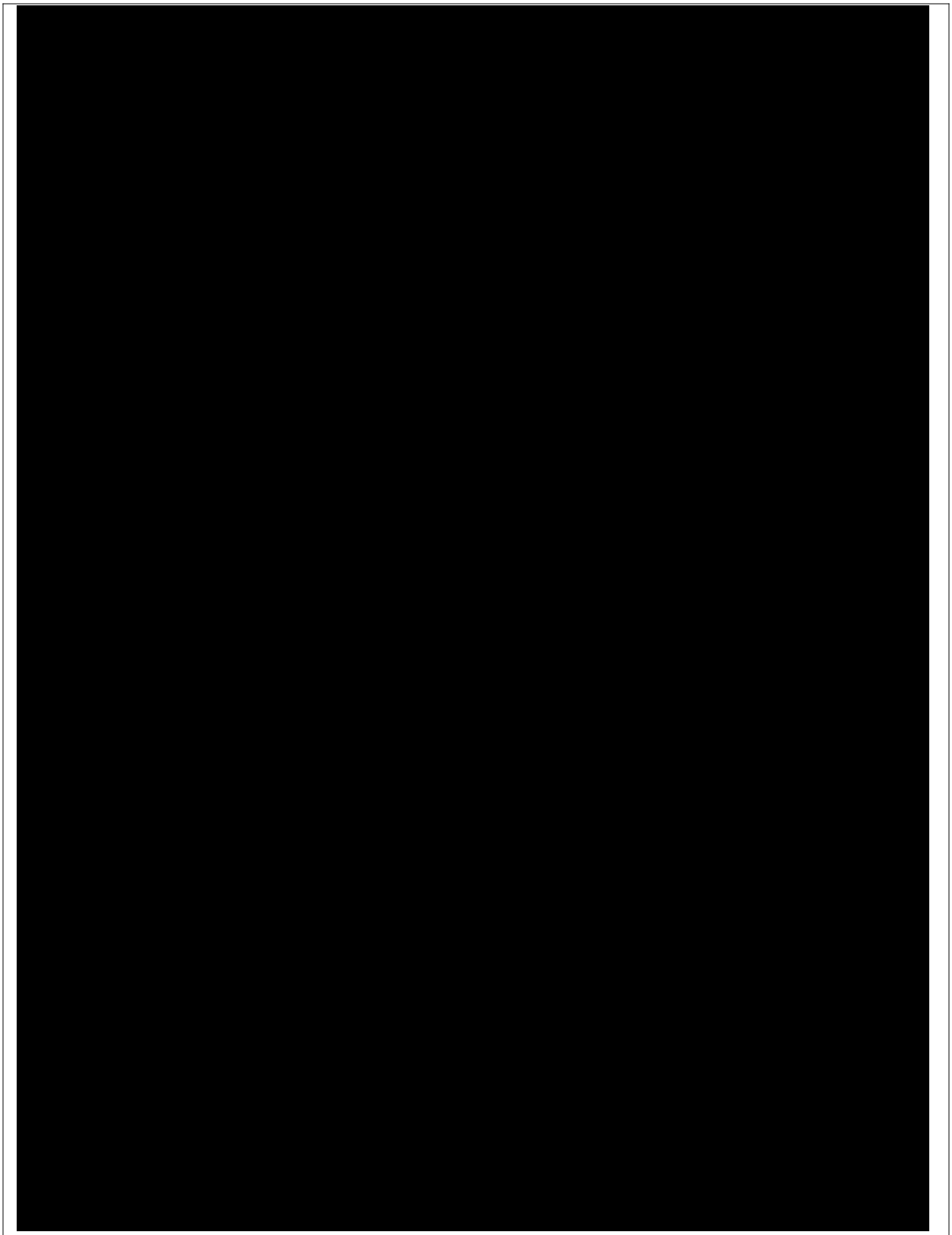
there's been some questions and answers regarding a possible complaint against Mr. Cleave that did not result in formal discipline -- at least I understood that was a question -- and then I think there's been references to whether Dr.~Sheep had complaints that didn't result in formal discipline.

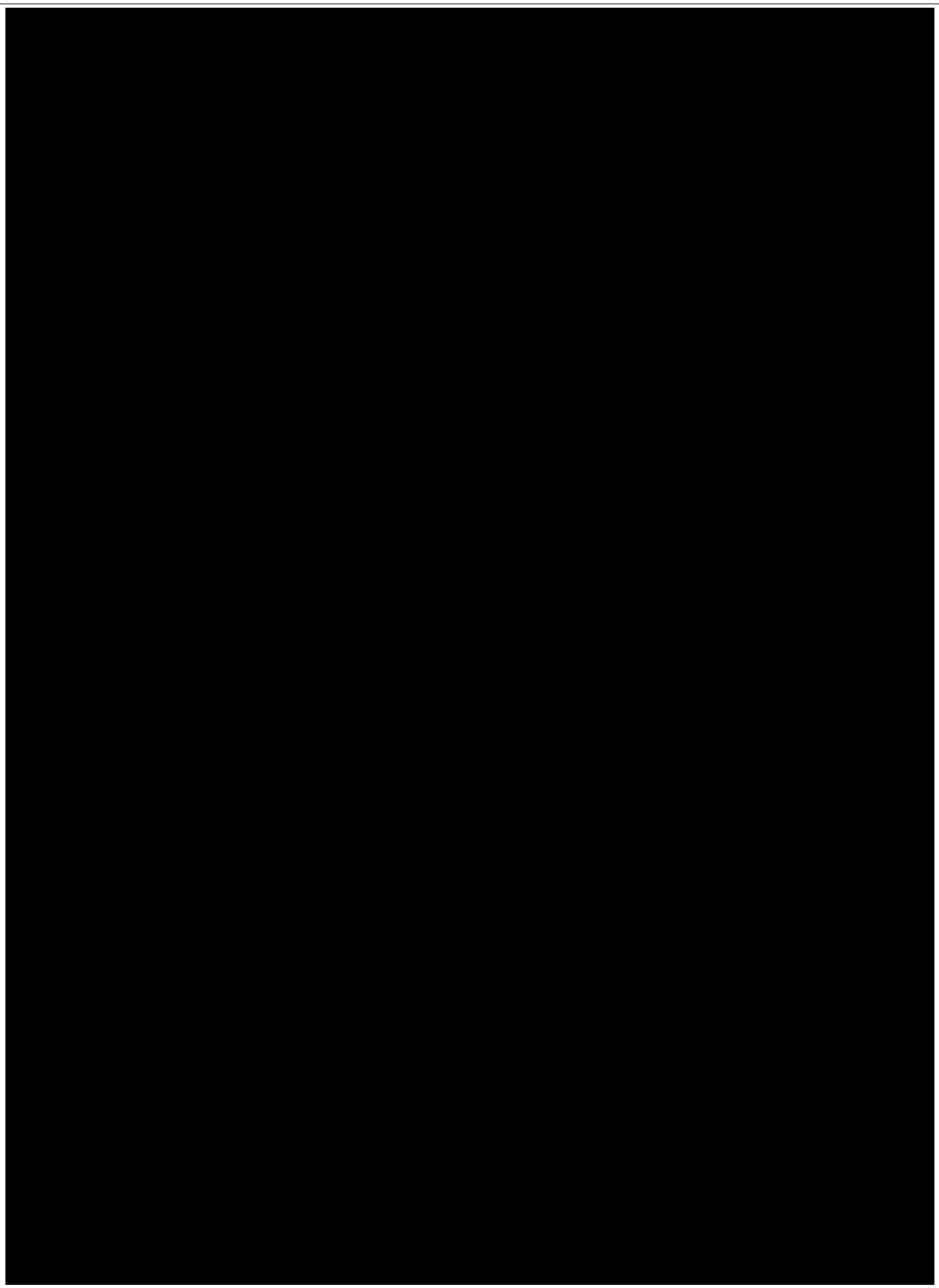
And I just want to make sure, because 630.336, sub 2 says that the record of this hearing is a matter -- you know, becomes public, but complaints that may have been investigated and that don't result in a formal filing are not public. And so I was hoping there's a way to extract those from the public transcript that will be provided to anyone who asks.

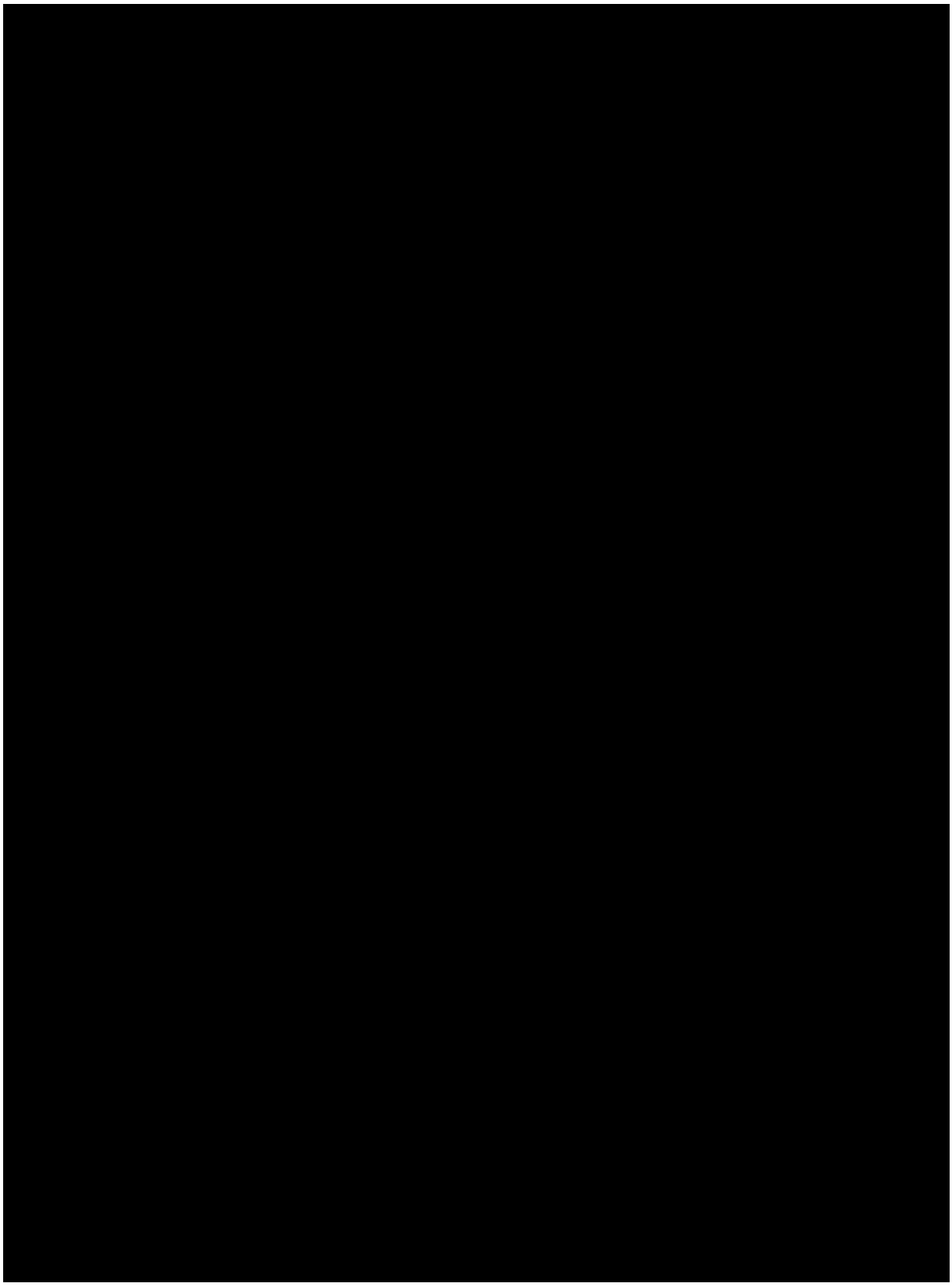
Obviously, the Board can know that information, that's something they can be privy to; I just don't want the public to be privy to that information because it's against the law.

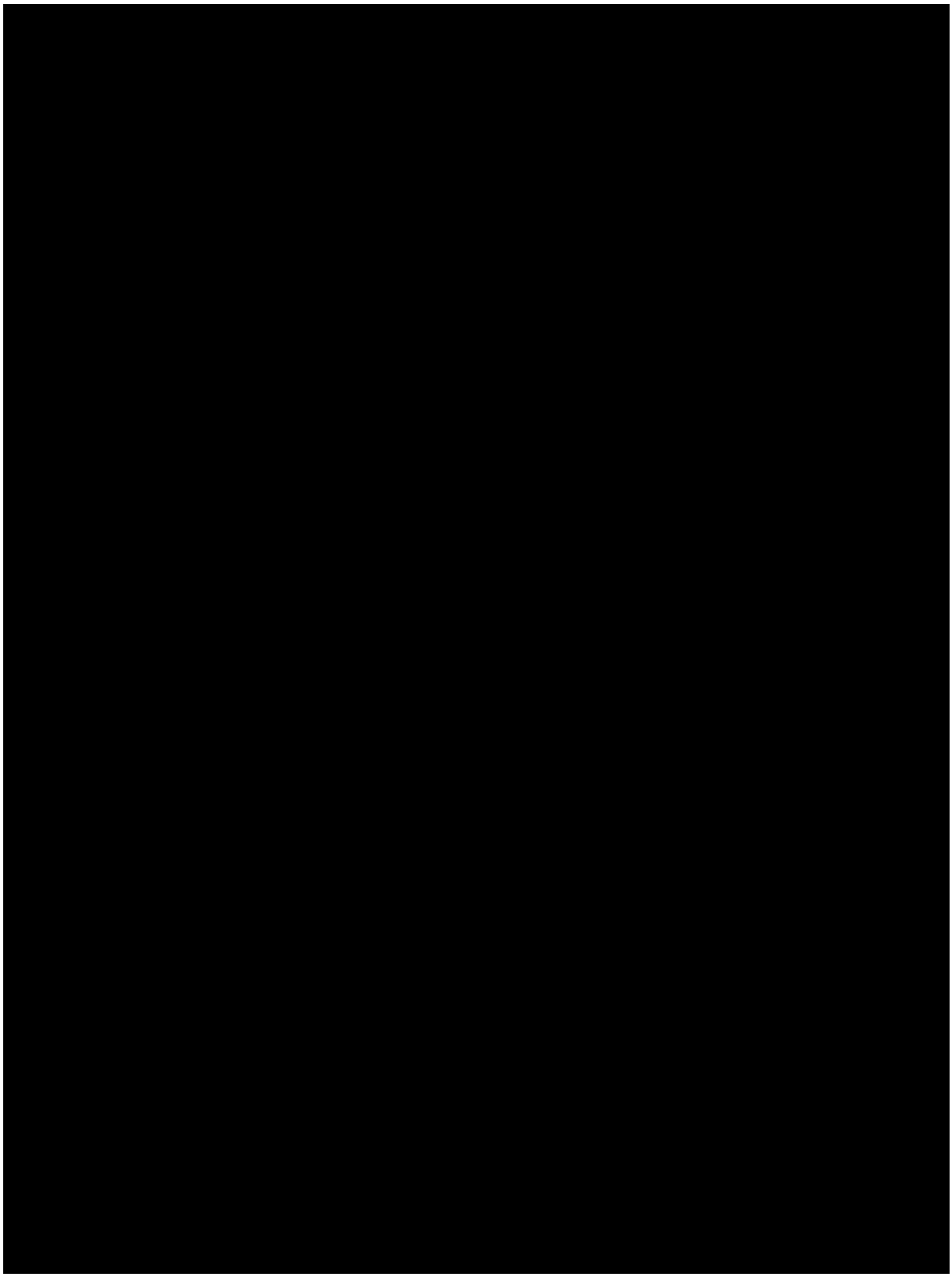
MS. ZASTROW: Your Honor, I have not referenced anything -- anything outside the scope of the 630.336. There was no objection while we were talking about what occurred.

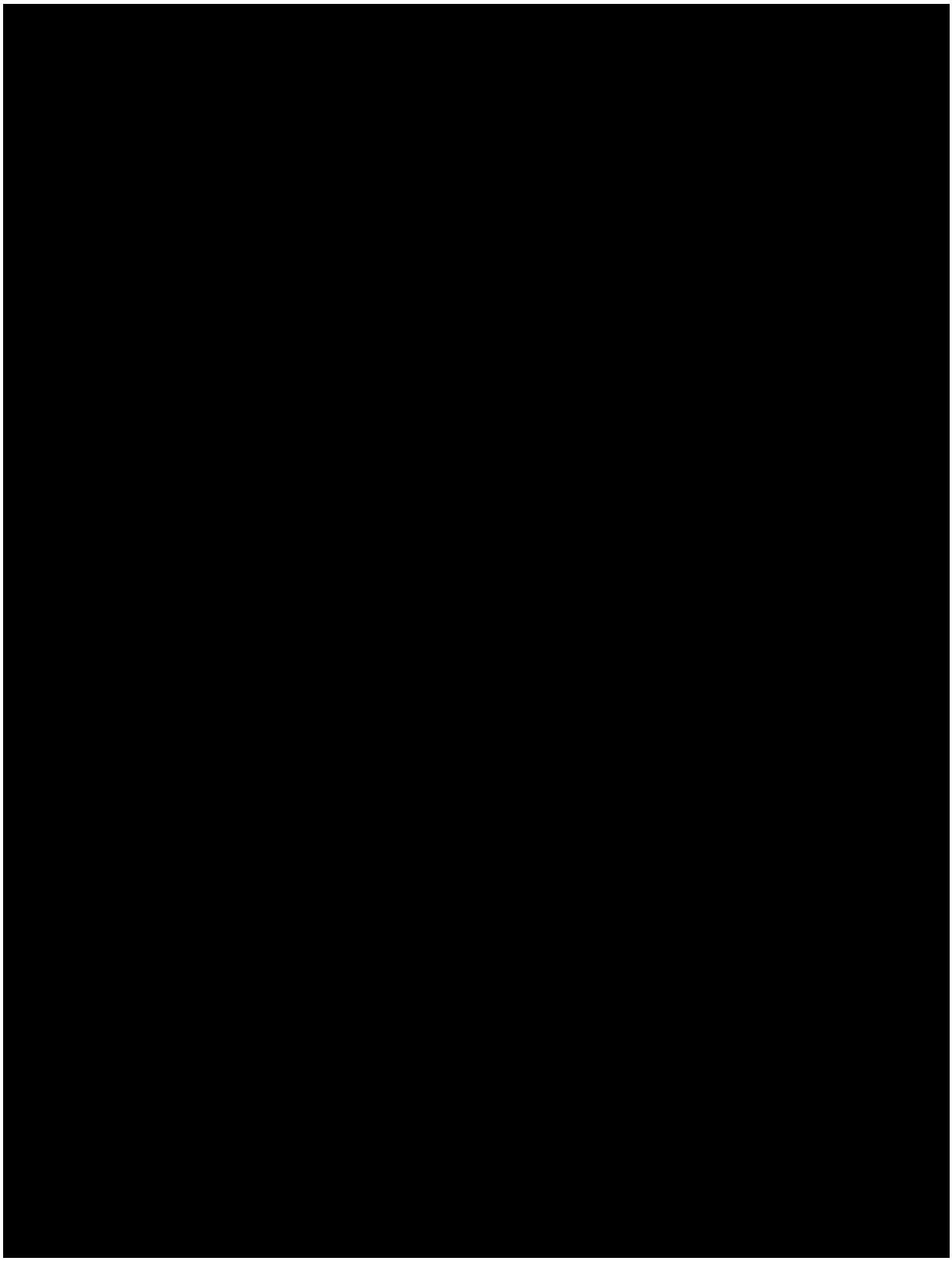
The only thing I've mentioned are incidents that resulted in a public stipulation by Dr.~Sheep.



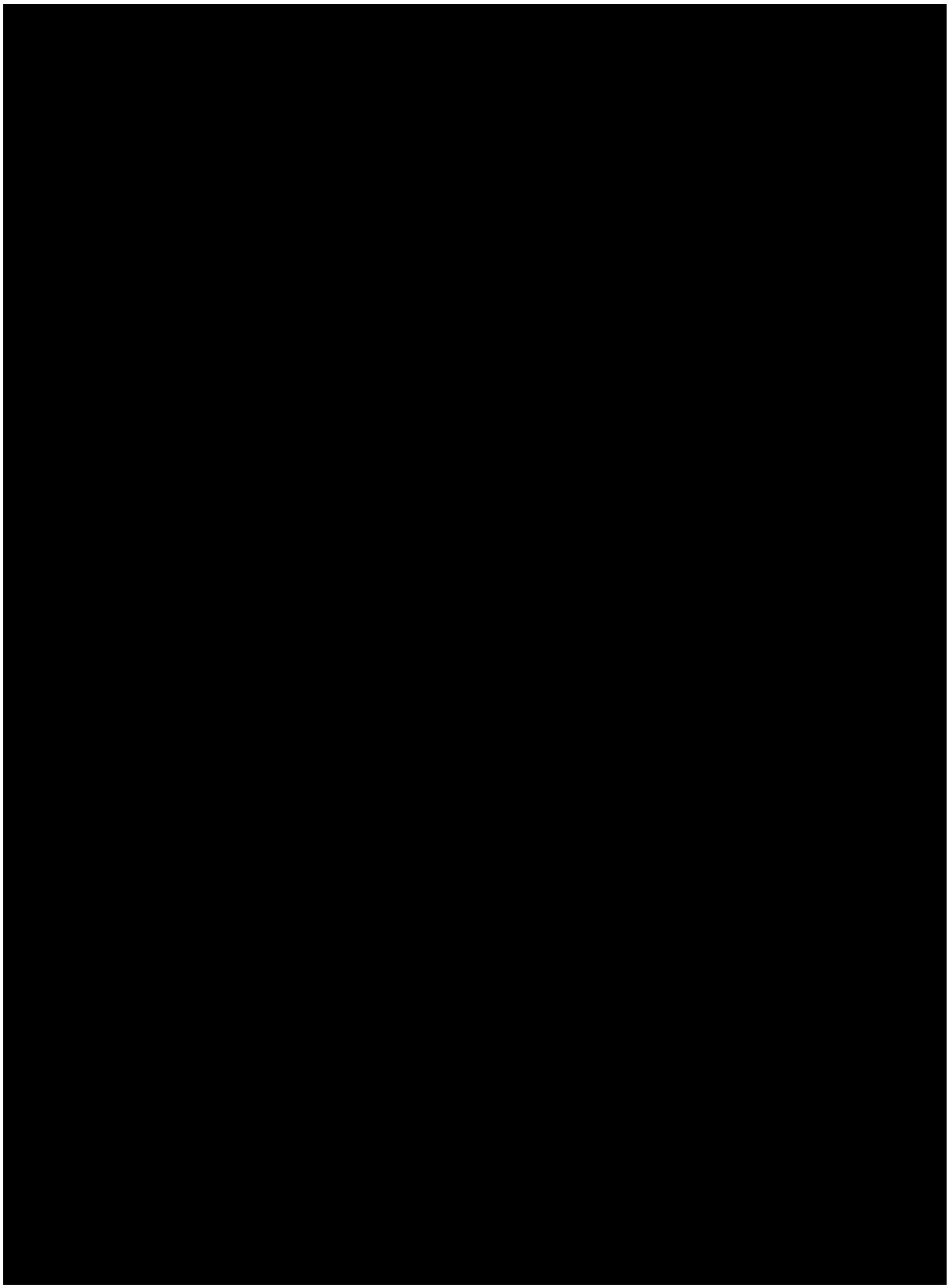


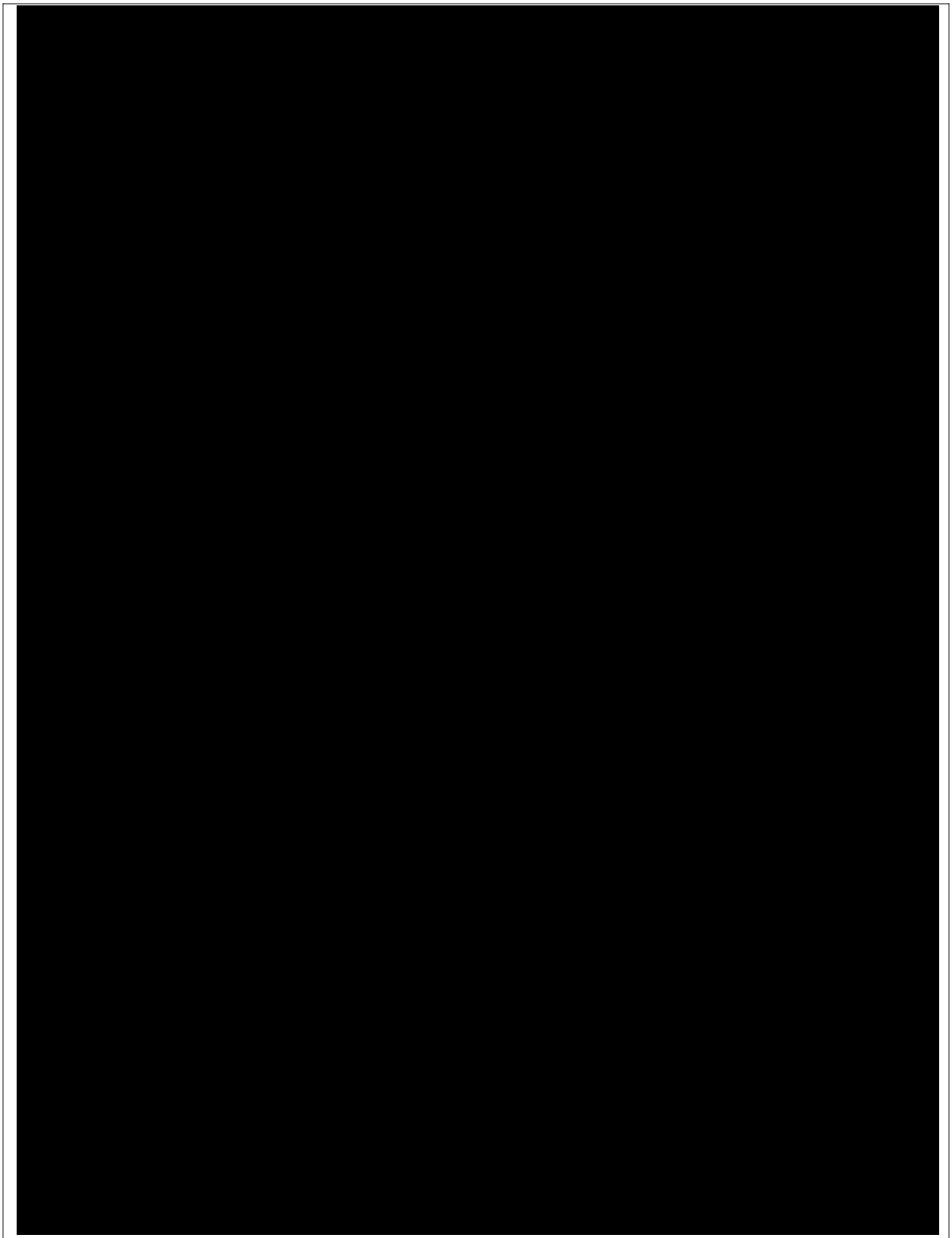












[redacted]

REDIRECT EXAMINATION

BY MS. BRADLEY:

Q. Mr. McCleve, let's go back to April 8, 2023. Do you recall the hours of your shift on that day?

A. Yeah. I believe it was a mid shift, so it was probably 11:30 to 11:30 at night.

Q. And when was the appointment with Patient A originally scheduled at the medi spa?

A. It would be prior to that. I don't know if it was 10:00, 10:30 or what.

Q. In response to some questions from Ms.~Zastrow, you said that you had implied permission and authority from Dr.~Sheep to perform cosmetic services -- the Botox in this case -- at the North Vista location.

What is the source of that implied permission?

A. You're -- you're conflating that. I didn't say that he gave me specific permission at North Vista. The distinguished -- what we were trying to distinguish there is I had implied permission to do cosmetic surgeries -- cosmetic procedures. Where that might be was to be determined.

Mr. Sheep -- Dr.~Sheep did not know that I took a patient to North Vista until I told him afterwards.

Q. Okay. But you are relying on the supervision agreement that was on file with Dr.~Sheep as of March 16, 2021, through June 27, 2023, to say that cosmetic services you provided

were supervised by Dr.~Sheep. Is that correct?

A. Correct.

Q. And I got a little bit confused in response to some of your answers because you said -- I heard you say and I wrote it down -- you were going to go ahead and work on an agreement, you were entering into an agreement, and I think this is referring to the business agreement.

What was the status of the venture between you and Dr.~Sheep on April 8, 2023?

A. As I stated before, it was in its infancy. We were developing relationships with different med spa owners.

Q. Okay. So it was in its infancy. Did it exist?

A. What do you mean "did it exist?" Did it exist as far as a handshake deal, word of mouth, you know, in a verbal agreement? Absolutely, it did. Did it exist within a documented contract? No, it did not.

Q. Okay. So there was a verbal agreement, but there was not a written agreement regarding that.

And I think you said -- I just want to make sure I understood -- that he had been --

Dr. Sheep did supervise you at My Shape Lipo?
A. He did.
Q. And you were no longer working at My Shape Lipo as of the date of the incidence in this case. Is that true?
A. On the date of the Botox paralytic, I was no longer at My Shape.
Q. Do you recall when your position at -- when you were no longer working at My Shape Lipo?
A. It had to have been March.
Q. Oh, March of 2023?
A. Yep. That same year.
Q. Did you receive the formal Complaint filed in this case?
A. Did I receive the formal allegations?
Q. Of -- yeah, the formal Complaint that's filed-stamped November 22, 2024.
A. Isn't that one of the exhibits?
Q. Actually, technically, it's not an exhibit.
A. Oh, you're right, I do have it, then. Yes, I did receive it.
Q. Okay. And were you aware that you're able to provide an answer to the formal Complaint?
A. No, I was not aware.

Q. Okay. Would you agree with me that you did provide one through your counsel on January 29, 2025?

A. I don't know what took place. There were several verbal conversations that Ms. Zastrow had with Ms. Contine. There were several emails that were filed back and forth that I wasn't -- that she did not share with me. I couldn't tell you exactly what took place in the communication between yourself, Ms.~Contine, or Ms. Zastrow on a detailed level.

Q. I'm not asking about conversations that you had with us. I was just asking if you did file a response to the Complaint, the formal Complaint.

A. I don't know if my lawyer did or not.

Q. Okay. If I told you I'm looking at one that's file-stamped January 29, 2025, and that was filed on your behalf responding to the Complaint, would you have a reason to disagree with me?

A. I would not.

Q. And we've already talked about the disclosures. So the exhibits that the Board put forth, they have been pre-identified as 1 through 10, they've all now been admitted into evidence. You were aware that the Board provided those to your

counsel, and I think you were able to review them sometime after May 7, 2025. Is that fair?

A. Correct.

Q. Were you aware that you also could have provided exhibits regarding this matter?

A. I was aware that my lawyer was handling the case and negotiating on my behalf.

Q. Okay.

A. As far as the intricacies of what I could and couldn't do, I don't -- I'm not a lawyer, I don't understand -- why would I need to go ahead and understand every intricacy of Nevada state law?

Q. My question --

A. I have -- I have a lawyer that's doing that. Correct?

Q. Well, you don't get to ask me questions. My question to you was just did you know you could provide documents in connection with this case prior to the hearing to the --

A. No, I did not.

Q. Okay. Earlier upon questioning with Ms.~Zastrow, you said that part of your care of Patient A was making sure he was an appropriate patient. Is that true?

A. Correct.

Q. And what goes into determining whether someone is an appropriate patient?
A. Past medical history, current medical conditions, current medications.
Q. What about current drug use?
A. It has no bearing on it.
Q. It has no bearing on whether someone's an appropriate patient to receive medication?
A. Are you telling me that I -- I have to turn away somebody that uses marijuana?
MS. ZASTROW: Objection to the term "medication." I -- we're talking about a specific medication here, some medication.
THE WITNESS: I mean, sure, I --
HEARING OFFICER HALSTEAD: Ms. Bradley, do you want me to rule on that objection, or do you just want to take another stab at it?
MS. BRADLEY: I'll rephrase. I apologize.
BY MS. BRADLEY:
Q. Mr. Cleave, I'm looking at Exhibit 2, and you testify that you prepared that. And I'm looking at page 2 of that, which is NSBME 004.
A. Okay.
Q. Do you see the paragraph that starts "Upon arrival"? Would you read that whole thing until the

period after "girlfriend"?

A. Sorry. On page 2?

Q. Yeah, it's page 2 of that. It's NSBME 004. I want you to start with "Upon arrival" and then end with "girlfriend" period.

A. "Upon arrival, I completed a series of medical screening questions. Patient admitted to recent extensive substance abuse with MDMA, cocaine, alcohol, and other, citing he was celebrating impregnating his girlfriend."

Q. But just for the record, because I think you're the only medical professional here today, what is MDMA, if you know?

A. It's "molly," is the street name, similar to ecstasy.

Q. Okay.

A. It's an amphetamine.

Q. And then you said "alcohol" when you read it, but I think the document itself says "ETOH," and I just wanted to clarify for the record what ETOH is.

A. That is alcohol. That's the chemical molecule that compose alcohol, the active ingredients.

Q. Okay. So your statement here to the Board

on July 21, 2023, was that when you screened this patient, the patient admitted to this recent extensive substance abuse. Is that true?

A. He admitted that he was partying, absolutely. And he admitted to these medications, to these drugs, these illicit substances.

Q. But it's your opinion that even if someone was recently extensively partying and using illicit substances, they're an appropriate patient to receive the Xeomin Botox injections that you provide?

A. Absolutely. There's no contraindication. If he was taking these substances of the day before, partying, he -- it does not exclude him the next day from undergoing paralytic treatment.

Q. Okay. So your use of the word recent, extensive doesn't mean that day?

A. No, it does not mean that day.

Q. It means within a day?

A. I did not ask him if he was on it that day.

Q. Did you screen the person for possible intoxication and/or signs of being impaired at the time you provided the treatment?

A. Absolutely.

Q. Did you document that anywhere?
A. Did I document if he was -- his -- his mental status and if he was sober?
Q. My question was -- my first question was, did you, basically, do a screening of some kind to make sure the patient was not impaired prior to providing the Xeomin injections, and I believe your testimony was that you did.
A. I did, yes.
Q. And then my second question was, did you document that examination of Patient A anywhere?
A. I did not -- I -- I did not document that particular detail --
Q. Okay.
A. -- in the -- in the notes that I have. But it was -- I do remember it.
Q. Okay. And you didn't include that in the information you provided to the Board in this document?
A. I did not.
Q. Recently when Ms.~Zastrow was asking you questions, you said that you knew it was stupid at the time, and that's referring to it was stupid to inject the Xeomin into Patient A at Visa Hospital on April 8, 2023. Is that fair?

A. False.
Q. Okay. What did you say when she -- when you said, you know, it was stupid at the time. What did that mean?
A. When I -- when I said it was stupid, it was a stupid decision to violate hospital policy and shoot Botox up in that patient.
Q. Okay. So the only thing stupid about it was just violating hospital policy?
A. Absolutely.
Q. I think there might have been some confusion about a question I asked you based on Ms.~Zastrow's questioning, so I just want to clear that up.
Are you aware that the form that is the form used to notify the Board regarding supervision of a physician assistant -- and we usually kind of call it the "supervision agreement" -- that form is available on --
A. I have looked for that multiple times. I cannot find it on the Board --
Q. Okay.
A. I assumed it was. It should have been. But there's -- I have looked multiple times and have never been able to find it.

Q. Okay. I just want -- okay -- because I think we talked about that. And then I think she said something that implied that you thought maybe your agreement was available online for review.

Did you ever think that at any time?

A. Did I ever think what? Say that again.

Q. That a supervision agreement you had on file with the Board was available on the Board's website for review?

A. I never thought that.

Q. Yeah. Okay. Good. I just want to make sure because I -- I want -- I was clear about the form, just the generic one. I just want to make sure because I think when she asked you something, it seemed like there was a thought that your form was available. I just want to clear that up.

I think I have about two more questions. The first one has to be -- do with the medical records again. I think your testimony in response to Ms. Zastrow was that the medi spa was responsible for the medical records in this case. Is that a fair recollection of what you said?

A. No. That is where the medical record in its entirety would have been stored and recorded.

Q. Okay. But whose responsibility is it to

make sure that medical records are timely, legible, accurate, and complete?

A. My responsibility.

Q. Your responsibility?

A. Correct.

Q. So you can use the medi spa, for example, to help you with some of the medical records, but, ultimately, the responsibility is yours?

A. Anything that's medically pertinent to the care of the patient is my responsibility to enter into the EMR.

Q. Okay.

A. The med spa owner is not medically trained. She can do some clerical stuff, i.e. get forms signed, get authorizations. But, no, anything that took care as far as the patient care is my responsibility to record.

Q. And I think you said that the medi spa owner obtained the consent in this case. Is that correct?

A. Correct.

Q. But you didn't review that consent?

A. Do I need to?

Q. Well, I mean, do you think consent for a procedure is a part of the medical record that's

kept for that case?

A. Again, there's lots of medical assistants that do this every day at medical offices, and I think it would be taxing on the -- on the physician's or practitioner's time to actually go into every chart and verify that consent is implied. They have to rely on the fact that the MA or whoever composed that or got that consent actually followed through with it.

Q. So you're not making sure documented consent is a part of patient records that -- for patient care you provide?

A. I would have, absolutely, once I started -- if I was able to access the EMR and enter my data into that, I would have made sure that he had an entirely complete chart. And if there were things that were missing, I would make sure that he would have them signed.

Q. So is it fair to say that your testimony is if the records are incomplete, it's because you didn't have access to the system?

A. Correct.

Q. And it wasn't your responsibility to ensure that they were complete?

MS. ZASTROW: Objection. Misstates his

testimony.

MS. BRADLEY: I'll withdraw.

HEARING OFFICER HALSTEAD: She's asking him if that's his testimony, so she's just asking him to clarify. If it's not, he'll clarify.

Ms.~Bradley, you already withdrew it, so --

MS. BRADLEY: I'll withdraw it.

BY MS. BRADLEY:

Q. I just heard you say, Mr. McCleve -- and I'm trying to square these two things -- that it was the medi spa's responsibility to keep the records, you didn't have access to them, you were relying on them for consent and other things to be documented.

But you didn't have access to those records. Is that true?

A. After the patient suffered his unfortunate reaction to whatever happened to his body, the relationship between the med spa owner and myself did not go further, and I did not have any access to to the -- to her EMR system to document.

Q. But on the day of the procedure, April 8, 2023, did you have access to the EMR procedure on that day?

A. I did not.

Q. You did not?
A. I did not. In my testimony, I said that I could not access the -- the office to administer the Botox, and therefore I went to North Vista.
Q. Okay. I know that. I just know that EMR -- can you tell us what it stands for?
A. I went ahead and mentioned this to Ms. Zastrow earlier: Electronic medical records.
Q. Okay. And do you have to be at a specific office to always access EMR records?
A. In this particular case, because I hadn't had setup on any of my home devices, absolutely you do.
Q. Okay. That's all I wanted to ask. Because in my mind, if it's an EMR, you might be able to access it on your tablet or your phone or something else. So just because you can't go into an office, it doesn't preclude your access to the system. So I just wanted to ask about that.
MS. BRADLEY: Can I pause for just a second? I think I'm done, but I just want to double-check my notes.
HEARING OFFICER HALSTEAD: Go ahead, Ms. Bradley.
MS. BRADLEY: I have one more question for

Mr. McCleve, if I may.
BY MS. BRADLEY:
Q. Mr. McCleve, you said you had notes regarding the patient's care on your phone, and you also had photographs of the injections provided on your phone.
A. Correct.
Q. Does your phone meet the criteria for storage and maintenance of medical records as required by Nevada law and federal law?
A. Well, there's no identifying markers of his name, so it wouldn't violate HIPAA. I've got pictures of the vial and I've got my procedure notes, but there is no name that would indicate that he was an actual patient. So therefore it doesn't violate HIPAA.
Q. Does anyone else ever have access to your phone?
A. Nope.
Q. So is it fair to say that any record on your phone regarding treatment of a patient would not be accessible to any future providers treating that patient?
A. Correct. Not unless I shared that information in an EMR system.

MS. BRADLEY: I have no further questions at this time.

HEARING OFFICER HALSTEAD: Ms.~Zastrow?

MS. ZASTROW: Thank you, Your Honor. I just have a couple of redirect, limited to her scope, if that's okay.

HEARING OFFICER HALSTEAD: Yes.

RECROSS-EXAMINATION

BY MS. ZASTROW:

Q. Kayle, do you have your phone?

A. What was that?

Q. Do you have your phone in front of you?

A. I do.

Q. Can you pull up the pictures of the vial and put them on the screen?

A. Oh, how do you do that?

Q. Just show them through the camera.

A. Oh. I gotcha.

Q. And I'm not saying that that's an adequate medical record. Right? You've already admitted it's not. Right?

A. Correct. Let's see here.

Q. You're not lying to anyone. Right?

A. Again, with the --

Q. It's okay. You can put it down. Put your

phone down.

You took photographs of the vials. Correct?

A. Correct.

Q. You took notes. Right?

A. I did.

Q. You had no access to the EMR. Right?

A. Correct.

Q. We've admitted this for two years. Correct?

A. Correct.

Q. We shouldn't be here today because this is an admission, there's no reason for witnesses, there's no reason for any of this testimony because you admitted a violation of recordkeeping. Correct?

A. Correct.

Q. You were asked about an answer in the Complaint. You never saw an answer, you said. Right?

A. I -- I never saw an answer.

Q. You don't know what your lawyer did on your behalf. Right?

A. We had verbal discussions about where it was going, and you informed me verbally.

Q. To your knowledge, are you required to

file an answer or certify or verify responses in something that's filed on your behalf?

A. I am.

Q. You think you're required to verify it?

A. Oh, I don't -- I mean, I guess, like, what does that mean? I mean, did we had a conversation?

Q. You didn't review it. Right?

A. Huh?

Q. If I told you I filed in an answer on your behalf and you didn't verify it, would you have any reason to disagree with that?

A. Uh-uh.

HEARING OFFICER HALSTEAD: Just for the record, that's a no. Mr. McCleve, you've been really good about saying yes or no. Actually, you usually say "yep." But for the record, we have to use affirmative language, so an uh-uh --

THE WITNESS: I'm sorry. No. No.

HEARING OFFICER HALSTEAD: So that was a no. That's why I noted it. And just please remember that when you testify going forward.

THE WITNESS: Yes, ma'am.

BY MS. ZASTROW:

Q. You were asked about your letter to the Board in terms of the history that you took of this

patient. Do you recall that? It was ten minutes ago. Right?

A. Yep.

Q. He took molly -- he took molly, he took a bunch of other drugs. Right?

A. Yes.

Q. Okay. You heard the testimony of Ms.~Elmquist. Right?

A. I did.

Q. She wasn't asked any questions about that, was she?

A. She was not.

Q. She was designated as their standard of care expert. Correct?

A. Correct.

Q. Didn't testify that he shouldn't have been given Botox because of his drug use. Correct?

A. Correct.

Q. She wasn't even asked that. Right?

A. She was not.

Q. To the extent I tried to question her about your email, she completely ignored it. Correct?

A. Correct.

Q. And you put information in your email to

the Board about what you did and the history that you took. Correct?

A. Correct.

Q. You said that his drug use and his partying, as you use the word, was not a contraindication, and that it was appropriate for him to receive Botox. Correct?

A. Correct.

Q. And nobody here has stated otherwise. Correct?

A. Correct.

Q. You're asked about your supervisory agreement and/or the form that's online. Do you recall that?

A. From Ms.~Bradley?

Q. Yes.

A. Yes.

Q. She said that your -- yours, with Dr.~Sheep or whomever, is not public. That's what she said. Right?

A. I believe so, yes.

Q. And I don't know if that's true or not, but that's what she said. Correct?

A. Yes.

Q. But the Board has access to that.

Correct?

A. Correct.

Q. Ms.~Bradley has access to that. Correct?

A. I would assume so.

Q. The licensing person she's about to call has access to that. Correct?

A. Correct.

Q. The investigators have access to that. Correct?

A. Correct.

Q. They didn't introduce any of that today as an exhibit. Correct?

A. Correct.

Q. Or yesterday. Correct?

A. Correct.

Q. They introduced a summary of your prior supervisors. Is that your understanding?

A. That is my understanding.

Q. As of right now, we don't have the supervising agreement with Dr.~Sheep. We tried to find it online, we couldn't find it, at least me. Did you do the same thing?

A. I did.

Q. Okay. Can't locate it. Right?

A. It's out there in the ether somewhere.

Q. Right. And so your testimony about that is based on your recollection. Correct?
A. Correct.
Q. Board hadn't put it in front of you. Correct?
A. Correct.
Q. In your frame of mind in -- on the day that this occurred, irrespective of the paperwork with the Board -- which I understand there's an NRS about that, but we're talking about in your mindset -- were you properly supervised and capable of administering the Botox injection?
A. Yes.
Q. Okay. Did Dr.~Sheep or Dr. Harris or anybody else in all the exhibits that you've seen tell the Board otherwise?
A. No.
Q. You've always admitted that it's your responsibility to keep an accurate record. Correct?
A. Correct.
Q. You've accepted that. Correct?
A. I have accepted that.
Q. You accepted it years ago. Correct?
A. Correct.
Q. But the practicality is that there is a

system called an "EMR." Right?

A. Correct.

Q. And that's -- that's just because we live in a world of technology. Right?

A. Correct.

Q. Okay. So a doctor here where I'm at in Green Bay might be able to find records from when I was in Vegas electronically. Correct?

A. Yeah, they have -- they do. It's plausible.

Q. It's plausible?

A. Um-hmm.

Q. You did not have access to upload or input any of the records to the EMR for this patient. Is that correct?

A. Correct. In order to gain access to an EMR, you have to be there physically on the system, because that makes it secure, and if you access it remotely, you have to go through a series of permissions and codes to actually access it remotely.

Q. And it doesn't really matter -- I'm only asking you because they asked you -- because you've admitted this 500 times at this point, the med spa owner contained a written consent form. Are you

aware of that?

A. I am.

Q. Okay. Is a written consent form required by law in Nevada? Before you answer that, is that something that's sort of a CYA that doctors do now because they're smart?

A. Yeah. Yeah. Especially with paralytics. Right? With paralytics, there's a -- you know, usually the manufacturer in most -- and actually I would say, all of the time, the manufacturer has a -- some sort of document that they have to acknowledge, the patient has to acknowledge prior to receiving their product.

Q. Nobody wants to get sued, right, we need that documentation?

A. I mean, I would love to say that, but, you know, you -- I had a liposuction case that basically there was three separate consent forms, and I -- and it still didn't work it out.

Q. I understand. But Ms.~Bradley asked these questions, I'm trying to quickly get through them.

The implication is there was no record of a consent. Correct?

A. There was record alleged --

Q. Just yes or no, was there a record of a

consent? No, there was not. Right?

A. There was on -- the med spa owner -- allegedly --

Q. Right.

A. -- the owner had it filled out with --

Q. Understood. Understood. And the Medical Board didn't ask for that record, to your knowledge. Correct?

A. They did not.

Q. Okay. Irrespective of that, you can see that you didn't have that record. Right?

A. I was verbally told by the med spa owner, who had been in business for a long time, that the patient had signed and consented all of the appropriate paperwork to receive treatment.

Q. Understood. And I don't mean to cut you off. I just want to really -- you know, these points have been hit ad nauseam.

This is a recordkeeping question, Kayle. You didn't have a written consent in front of you. Right?

A. I did not.

Q. Never claimed you did. Right?

A. Never claimed I did, nope.

Q. Always admitted you didn't. Right?

A. Correct.
Q. Okay. But did this patient consent?
A. He did.
Q. Did he thank you?
A. He did.
Q. Did he want you to do this again?
A. Absolutely.
Q. When your patients that day came into the ER -- or, no, let's talk about now. When your patients come in now from your day-to-day work at the new clinic where you're learning a whole new area of medicine that you didn't really want to learn, do you look at the consent for treatment before you start rendering treatment?
A. No.
Q. You don't, do you?
A. Nope.
Q. There's paperwork. Right?
A. That is paperwork that is handled by the MAs.
Q. It's necessary paperwork. It's good practice. It's ethical practice.
But you, as the treating physician, don't sit there and look at the consent. Right?
A. Correct.

Q. The patients that come into the ER, you don't look at the consent for treatment. Right?

A. I would take that one step further: I don't look to ensure that registration, appropriate, you know, identifying markers are there. I don't look at any billing information. I don't look at any insurance information. No.

My job and what -- the time that I have to spend with the patient is solely dedicated on delivering the care of medicine.

Q. Okay. Do you know what a custodian of records are -- is?

A. I do.

Q. Okay. For this patient, who would have been the custodian of records?

A. The med spa owner.

Q. Not you. Right?

A. Not me.

Q. You told the Board that this was not your patient, that this was a med spa patient. Correct?

A. I told the Board that it was a client, the med spa client, and it was my particular patient that I worked on.

Q. Understood. Understood. And again, beating a dead horse here, we've already admitted

this for years.

A minute ago -- I just want to make sure that I heard you correctly, because you said something about the patient having an adverse reaction. This patient did not have an adverse reaction. Correct?

A. So the patient had a -- had some -- something happened, an adverse event. It was not related to the Botox or paralytic or Xeomin.

Q. Understood. So not related to your treatment in your care. Correct?

A. Correct.

Q. In all the records that have been admitted, no one has said that it is. Correct?

A. Correct.

MS. ZASTROW: All right. I don't have any more questions, Your Honor.

HEARING OFFICER HALSTEAD: Thank you.

Ms.~Bradley, Mr. McCleve, started as your witness. I'll give you the last bite at the apple.

MS. BRADLEY: I have no further questions for Mr. McCleve.

HEARING OFFICER HALSTEAD: Thank you. Your next witness?

MS. BRADLEY: I accidentally minimized my

screen. I would call Ms. Kory Linn. I believe she's available. I can check with Ms. Fuentes to see if she's in the lobby. I'm not sure.

MS. FUENTES: She is not in the lobby, but I just sent her a message asking her to join the Zoom link.

MS. BRADLEY: Okay. So she should be joining momentarily.

HEARING OFFICER HALSTEAD: Does anyone need to take a break before we start with her?

MS. BRADLEY: I wouldn't mind taking a couple minutes just to use the restroom, if that would be all right.

HEARING OFFICER HALSTEAD: Okay. So it's 2:26. Why don't we come back at 2:35? Is that sufficient?

MS. BRADLEY: Yeah. Thank you.

MS. ZASTROW: Thank you.

HEARING OFFICER HALSTEAD: Thank you.

(Recess from 2:26 p.m. to 2:35 p.m.)

HEARING OFFICER HALSTEAD: Okay. It's 2:35. We're back on the record in case number 24-42281-1, In the Matter of the Charges of -- virtual connectivity issues -- we left off with

Ms.~Bradley calling Ms. Linn.

MS. LINN: Good afternoon.

HEARING OFFICER HALSTEAD: I'm Patricia Halstead, the Hearing Officer. I'm going to swear you in. Will you please raise your right hand?

(The oath was administered.)

HEARING OFFICER HALSTEAD: Thank you. Can you please state and spell your name for the record?

THE WITNESS: Kory Linn, K-O-R-Y L-I-N-N.

HEARING OFFICER HALSTEAD: Ms. Bradley, your witness.

DIRECT EXAMINATION

BY MS. BRADLEY:

Q. Ms. Linn, what is your job title?

A. I am the chief of licensing for the Nevada State Board of Medical Examiners.

Q. What is your role as chief of licensing?

A. (Virtual connectivity issues).

Q. Are there various other duties assigned?

A. Supervision agreements that are filed with the Board.

Q. Okay. Before you became the chief of licensing, did you have other duties?

A. Prior to that, I was a licensed -- virtual connectivity issues.

Q. How long have you been employed at the Board?
A. Since June of 2020.
Q. And then how long have you been the chief of licensing?
A. About two and a half years.
Q. But it's fair to say that you're familiar with supervision agreements and the information that's contained in them?
A. Yes.
Q. Is there a form that the Board utilizes for supervision agreements?
A. Yes.
Q. And is that something that's publicly available on the Board's website?
A. Yes, it is.
Q. Could you help us navigate to where that might be on the Board's website?
A. Yes. Let me get on there.
Q. So what's the Board's website address?
A. The website is medboard.nv.gov.
Q. Could you spell that just in case for the court reporter?
A. Of course. Medboard, M-E-D-B-O-A-R-D, nv.gov.

On the home page under "popular links," it shows licensure forms. If you move to physician assistant licensure forms and scroll down --

HEARING OFFICER HALSTEAD: Hold on. I think for -- at least trying to follow along, so I'm on the main page, and where am I supposed to be going to that?

THE WITNESS: On the right hand side, it says "popular links."

HEARING OFFICER HALSTEAD: Okay.

MS. ZASTROW: I'm not getting that either. I don't see any popular links. I'm sorry.

HEARING OFFICER HALSTEAD: It's under -- it's on the actual -- it's not -- so where you look on the ribbon, that's not where you look, you look below.

THE WITNESS: It's down farther to the right. There should be a picture of -- some sort of picture up there, and on the right it says "popular links."

MS. ZASTROW: So sorry, I thought you said "home."

THE WITNESS: That's okay.

MS. ZASTROW: Okay. Under "popular links."

THE WITNESS: Yes. And then licensure forms under that.

MS. ZASTROW: Okay.

THE WITNESS: And then you'll see "physician assistant licensure forms." And then once you click that, down toward the bottom, it's going to be two above where it says "general forms," it's "Notification of Supervision of Physician Assistant."

BY MS. BRADLEY:

Q. So if we click on that link there, does that take us to the form that the Board uses?

A. Yes.

Q. Can you summarize the contents of what's included in the supervision agreement for us?

A. Yes. It begins with the -- the physician attesting that they're licensed to practice in the state of Nevada. They provide their license number and attest that they're in good standing, and that they engage in the practice of medicine in the state.

And they are agreeing to supervise the physician assistant. They are saying that they're -- they have read and are aware of the provisions of Chapter 630 of the NRS, as well as

Chapter 630 of the NAC.

And so there's a paragraph about them being aware of their duties as a physician that will be supervising. They certify that the relationship does not violate the -- any limitations cited above concerning the total number of physician assistants, so -- because they're limited in how many mid-level providers they can certify -- or, sorry, supervise. So they're attesting that they're aware of that and meet those requirements.

They provide a practice location. Then they sign and date it in front of a notary. And then below that, the physician assistant, they also have something that they sign date in front of a notary saying that they're aware of the provisions as well.

Q. And when you say "they're aware of the provisions," what do you mean?

A. That they're aware of the provisions of Chapter 630 of the NRS and NAC, which parts of that determine -- or they -- they spell out what their requirements are for a supervising relationship.

Q. When it says "practice location," is that singular or plural?

A. It gives the option. It says "practice

location," and then it has an "S" in parentheses. And it says to use an extra page of necessary.

Q. In your experience reviewing these agreements with the Board, have you seen some that have more than one location included on the agreement?

A. I believe so. It's been quite a while since I've reviewed these because they're handled by administrative assistants. But we do frequently get practice location updates as well.

Q. So you get updates to the location, and you also have, perhaps, the opportunity for a physician or a physician assistant or, I guess, both, because they're both signing it, to provide more than one address location?

A. That's correct.

Q. Earlier there's been some testimony regarding something -- that's Exhibit 7 in this case, and I don't know if you have the exhibits in front of you.

A. I do not.

Q. Okay. I think I will ask Ms. Fuentes to send you that exhibit right now, if that's -- that's all right.

HEARING OFFICER HALSTEAD: Sure.

MS. FUENTES: I will go ahead and email them to you right now.

THE WITNESS: Okay.

Exhibit 7, you said?

BY MS. BRADLEY:

Q. Sorry. I muted. Yes.

A. Okay. Let me take a look.

Q. Do you have that now?

A. Yep.

Q. Okay. So we've already admitted this into evidence, but since you're the chief of licensing, I just wanted to ask you about date of association and the date of disassociation --

A. Okay.

Q. -- specifically regarding the top two providers on this document.

Dr.~Sheep, do you see a date of association?

A. Yes. March 16, 2021.

Q. And then do you see a date of disassociation?

A. Yes. June 27, 2023.

Q. And what does "date of association" mean?

A. That is the date that the supervising agreement is reviewed and approved by the Board.

Q. Okay.
A. Once the administrative assistants checks it -- administrative assistant checks it, makes sure that everything is in order and the notarizations are correct, the physician is able to supervise all those things, they confirm it, and that's the date that it's effective.
Q. Okay. And then what does the "date of disassociation" mean?
A. That is once we receive a termination notice from either the physician assistant or the physician.
Q. Okay. And do you see the date of association for Dr. Harris?
A. Yes. February 2, 2017.
Q. And what is the date of disassociation?
A. April 17, 2023.
Q. Let's go back to the supervision agreement form again.
A. Okay.
Q. Would you please read the sentence that says -- it's just above where the practice location is, that blank part, it says "Upon receipt," could you read that sentence?
A. "Upon receipt of same, I will be

supervising the following-named physician assistant at the following practice location or locations."

MS. BRADLEY: Can I have one second, I'm sorry, just to look at my notes?

Based on Ms. Linn's testimony and the fact that the supervision form, the blank form is available on the Board's website, I would like to admit it as something that I think can be used as judicial notice under NRS 233B -- for -- 233B.123. Specifically, that provision -- I want to get the right subsection.

MS. ZASTROW: You don't have to stipulate. In fact, I was also going to move to admit it. Thank you.

MS. BRADLEY: Okay.

MS. ZASTROW: No objection for me.

HEARING OFFICER HALSTEAD: Okay. The notification to Nevada State Board of Medical Examiners that supervision of physician's assistant form, located on the website, the blank form that we've been addressing through Ms.~Linn's testimony, will be admitted by stipulation as Exhibit 11.

(IC's Exhibit 11 admitted.)

MS. BRADLEY: And, Ms.~Halstead, just so I'm clear, is this something that you'd like me to

supplement, like, in a paper form as a supplement exhibit for the hearing?

HEARING OFFICER HALSTEAD: I printed it out. Thank you.

MS. BRADLEY: Okay.

HEARING OFFICER HALSTEAD: And just for the record too, the form I printed out, it's not only the form, but also the recitation of the statutes that follow it.

MS. ZASTROW: That's what I would like admitted, Your Honor.

HEARING OFFICER HALSTEAD: And that is what is admitted.

MS. BRADLEY: I have no further questions for Ms.~Linn at this time.

HEARING OFFICER HALSTEAD: Go ahead, Ms.~Zastrow.

MS. ZASTROW: Thank you.

CROSS-EXAMINATION

BY MS. ZASTROW:

Q. Ms.~Linn, I'm Lisa Zastrow. I'm Mr. McCleve's counsel. Thank you for bringing this document to the attention of the Hearing Officer. You haven't been a part of this hearing, but we've been talking an awful lot about the scope of a

physician assistant and what a physician assistant can and cannot do under Nevada law. Okay?

And you just authenticated this notification, this supervising agreement that's required to be completed. Correct?

A. Yes.

Q. Okay. You're probably aware that from time to time, physician's assistant also enter into other agreements outside of what's required by the Board, business agreements, business relationships, that sort of thing. Would that surprise you?

A. Not necessarily. But I'm not aware of -- of those circumstances.

Q. Okay. Well -- and you haven't heard the testimony because we've been talking about a lot of agreements.

But this form, which is Exhibit 11, this is the form that's required by the Board. Correct?

A. Yes.

Q. This is all that's required under Nevada law for a physician assistant to practice medicine under an MD. Is that correct?

MS. BRADLEY: I'm going to object. That is a legal question that calls for a legal conclusion. Ms.~Linn is not an attorney.

If this is the only thing that's necessary for a physician assistant to practice, I don't know that she's qualified to say.

MS. ZASTROW: Your Honor, she called this witness, she put this amazing document --

HEARING OFFICER HALSTEAD: Ms. Zastrow, can you just repeat your question for me, please? Because it was kind of long, and so I want to break it down.

BY MS. ZASTROW:

Q. And I want to be clear for the Hearing Officer, Ms. Linn.

You're not a lawyer. Correct?

A. Correct.

Q. But you issue licenses. Right?

A. Correct.

MS. BRADLEY: I'm going to object. I think the request from the Hearing Officer was for you to repeat the question. Are you going to repeat the question or ask --

MS. ZASTROW: Ms. Bradley --

MS. BRADLEY: -- or --

MS. ZASTROW: -- or, I'm sorry, Ms.~Halstead, I withdrew the question. I don't want to address Ms.~Bradley directly, but I would ask

that she quit interrupting me.

HEARING OFFICER HALSTEAD: Well, I -- okay. You're withdrawing the question and you're moving on?

MS. ZASTROW: Yes.

HEARING OFFICER HALSTEAD: Thank you.

BY MS. ZASTROW:

Q. Ms.~Linn, you're not a lawyer, right, we can all agree to that?

A. Correct.

Q. You issue licenses. Right?

A. Correct.

Q. Do you call the lawyer every time you do that?

A. No.

Q. You read the forms, you make a decision whether or not to issue a license. Correct?

A. There's a significant process involved, but I make the final --

Q. I'm sure there's a process.

This is the supervision agreement between an MD and a PA. Correct?

A. Yes.

Q. And I'm saying "MD" because you're the Medical Board. Right?

A. Correct.
Q. There's also a DO board. Right?
A. Yes.
Q. But this document right here is all that's required -- and we can talk about Nevada law, and I'm going to get to that.
But for you, this document is what's required for a MD to supervise a PA. Correct?
A. For them to be linked in our system, correct.
Q. Show me in this document where it talks about what the PA and what the MD are going to be doing? Let me give you an example.
Let's say they're going to be working in cosmetics, show me in this document where that's in this document?
A. I don't know that that specific circumstances is in the document, but the NAC 630 and NRS 630 that are -- I'm sorry, the NAC 630 that's related are spelled out on page 2 of the document.
Q. That's right. Because the PA and the MD have to comply with Nevada law. Right?
A. Yes, they do.
Q. Yes, they do.

But all that's required for the Board to the supervising agreement is this document where you're told that the MD is going to be supervising the PA. Correct?

A. Correct.

Q. And nowhere in this document does it say -- let's just say, hypothetically, this is talking about Mr. McCleve. Nowhere in this document does it say he can only work in an emergency room. Right?

A. I would say that it does -- they do attest that they are aware of the provisions of Chapter 630 of the Nevada --

Q. Exactly.

A. -- Revised Statutes and the Nevada Administrative Code, which are both available on the website as well. And I believe that other parts of the NAC and NRS speak to scope of practice issues.

But that, again, is always an issue.

Q. Correct. They are bound by the law in what their scope is, and you haven't been asked to testify about that. And I'm not asking you about that. There's been plenty spoken about that. Okay?

You were called to testify about this form, and nowhere in this form -- let's say this

form was between a doctor named Andy Sheep and Kayle McCleve. Where in this form is Dr.~Sheep required to notify the Board that Mr. McCleve is only being supervised for cosmetic procedures? It's not in this form, is it?

A. No.

Q. Because Mr. McCleve and the MD have to comply with Nevada law. Correct?

A. Correct.

Q. And Nevada law tells the MD and the PA what their scope of practice is. Correct?

A. That is my understanding.

Q. And the Nevada Medical Board had multiple supervisory agreements on file regarding Mr. McCleve. Correct?

A. He has had various supervisors at different times.

Q. Right. And that's not uncommon. We've already heard testimony about that.

And you looked at that exhibit, Exhibit 7, and it shows he's had multiple supervisors. Correct?

A. Correct.

Q. Okay. Show me in this document where it says that a physician's assistants is required to

seek permission before they perform any services on behalf of their supervising doctor?

A. I don't know that it's on the form itself. That would be something within NRS or NAC 630.

Q. Correct. Because the MD and the PA are governed by Nevada law. Correct?

A. Correct.

Q. All that's required of a PA in Nevada for licensing -- or, is this supervision agreement. Right?

A. And a valid license and everything leading up to that as well.

Q. Did Mr. McCleve have a license?

A. Yes.

Q. He still has a license. Correct?

A. I believe so, but I don't have his information in front of me.

Q. Is there any requirement that a supervising MD notify the Board of what their PA's scope is going to be?

A. I am not 100 percent sure on that. But --

Q. If I told you --

A. -- it might be somewhere in the law, and maybe I'm not aware of that. I don't know.

Q. And for this particular document, we're

talking about the law which is stated on the second page. Correct?

A. I would say the entire scope of Chapter 630 of NAC and NRS, as they attest to in the form.

Q. Okay. These two laws are really important because they're attached to this form. Would you agree to that?

A. Yes.

Q. All right. Let's look at the two. Look at the second page, you see NAC 630.370. Do you see that?

A. Yes.

Q. A bunch of duties there owed by the MD. Do you see that?

A. Yes.

Q. All right. Look at 630.360. See that?

A. Yes.

Q. Number 1 says:

"The medical services which a PA is authorized to perform must be" -- number A, letter A -- "commensurate with education, training, experience, and level of competence of the PA."

Do you see that?

A. I do.

Q. Does the Board require the PA to submit

any documentation to support that they're commensurate with education, training, experience, level of competence?

A. The physician and the PA attest to these things. And on the licensing side, that's where we stop, because once that relationship has been established, anything else beyond that would be through investigations or legal department. I can't speak to that.

Q. And that was going to be my next question, which is, the answer for that is yes, because they're already licensed, because they have already provided that information to the Board. Correct?

A. As far as their training and experience, yes.

Q. And level of competency. Correct?

A. Yeah. They -- they have an exam that they have to pass.

Q. The second one, letter B, "Within the scope of practice of the supervising physician," do you see that?

A. Yes.

Q. Nothing in this form says you have to tell the Board if you're going to be doing liposuction, does it?

A. I do not see anything saying specifically --
Q. Right.
A. -- that.
Q. Because the MD and the PA are required to uphold the law in Nevada, which is spelled out in the NAC and the NRS. Correct?
A. That's my understanding.
Q. Okay. In this case, PA McCleve, the respondent, he had a supervising agreement with Dr.~Sheep. Correct?
A. He did.
Q. And he also had one with Dr. Harris. Correct?
A. He did.
Q. And he had a license. Correct?
A. Yes.
MS. ZASTROW: I don't have any more questions.
HEARING OFFICER HALSTEAD: Ms. Bradley, redirect?
MS. BRADLEY: All right.

REDIRECT EXAMINATION

BY MS. BRADLEY:
Q. When a supervising physician provides this

form to the Board, I think you already read this sentence, but they provide a practice location. I think we already talked about that. Is that true?

A. Yes.

Q. And Ms. Zastrow just now asked you about whether or not the form says "emergency room" or something to that effect. But it does ask for a location where the services are going to be provided, doesn't it?

A. Yes.

Q. So if someone was providing services in an emergency room, would you expect to see the address of the hospital or the emergency room on the form?

A. Yes.

Q. Let's look back at NAC 630.370. It's on that second page, and it's sub 1, that first number, and then "b". I want you to look at the "b."

A. Uh-huh.

Q. But let's start with -- let's read the first part, which is 1, and then there's a colon and then read "b." So start with "Except as otherwise provided," and then skip to "b," and then you can stop.

A. "Except as otherwise provided in NAC 630.375, the supervising physician is responsible

for all the medical activities of his or her physician assistant, and shall ensure that, (b), the physician assistant performs only those medical services which have been approved by his or her supervising physician."

MS. ZASTROW: Exactly.

MS. BRADLEY: Not sure that was an appropriate comment, but --

MS. ZASTROW: Oh, I am so sorry. I -- I apologize. I apologize. I thought I was muted.

BY MS. BRADLEY:

Q. Ms. Linn, if we look back at that sentence where the -- right before the locations where it says "I will be supervising the following-named physician assistant at the following practice locations," do you think that indicates approval for that physician assistant to practice at the location that's named?

A. Yes.

Q. So if a physician assistant -- I'm not going to ask it. You're not a lawyer. I'm sorry.

MS. BRADLEY: That's all I have.

MS. ZASTROW: I don't have any more questions. Thank you.

HEARING OFFICER HALSTEAD: Ms. Bradley,

the last thing I heard you say is "you're not a lawyer" --

MS. BRADLEY: Please strike that. I was going to ask her if someone did services at a location that wasn't listed on the form, if that would be something the supervisor authorized, but I don't think that's something I should ask her. I'll just argue about that.

HEARING OFFICER HALSTEAD: Okay. But I didn't know if you had any more questions, and then I heard Ms.~Zastrow say she didn't have any more.

MS. BRADLEY: Oh, I'm sorry. I said I don't have any more questions for Ms. Linn at this time. I do reserve the right to recall her in rebuttal, should I need to, and I do anticipate resting and doing a rebuttal case.

HEARING OFFICER HALSTEAD: Okay. And, Ms.~Zastrow, you don't have any more questions?

MS. ZASTROW: Yeah. I don't know what she just meant by that. I -- were done. I have no other -- what does she mean by rebuttal?

MS. BRADLEY: I'm allowed to present a rebuttal case, should I need to, after I rest.

HEARING OFFICER HALSTEAD: Are you resting, Ms.~Bradley?

MS. BRADLEY: I have no further witness to to call in my case chief, so I do rest at this time.

HEARING OFFICER HALSTEAD: Okay. But Ms.~Zastrow is not going to call any witnesses, so there's nothing to rebut.

MS. BRADLEY: Well, Ms.~Zastrow did ask questions of Mr. McCleve. I realize I called him, but we stipulated to the fact that she would call him once.

She asked lots of questions of him. We stipulated that he would be called once, and she referred multiple times that she was asking questions as part of her case in chief with regard to Mr. McCleve.

So based on the questioning that she provided to Mr. McCleve, which was not fully cross-examination, I am entitled to put on a rebuttal case regarding things that Mr. McCleve said.

HEARING OFFICER HALSTEAD: Okay. And who are you intending to call?

MS. BRADLEY: I have Dr.~Sheep available and ready to testify as a rebuttal witness.

HEARING OFFICER HALSTEAD: Okay. And is he prepared to appear right now?

MS. BRADLEY: I believe so. My colleague is going to text him. We have texted him, so I believe he's --

MR. CUMINGS: He's logged in.

MS. BRADLEY: He's logged in right now. He should be in the waiting room.

Ms.~Linn, I apologize, I'm not asking more questions of her. And I think, Ms.~Halstead, she might be waiting for you to tell her she can leave.

HEARING OFFICER HALSTEAD: Yeah. I mean, if you're releasing Ms. Linn, subject to recall, she can go. I don't know if that was your intention or not.

MS. BRADLEY: That is. I don't have more questions now. I may need her in rebuttal. But I'm not planning on that because I just asked her, I think, everything I intended.

THE WITNESS: Okay. So I can leave, then?

HEARING OFFICER HALSTEAD: Yeah. You're excused, Ms. Linn. Thank you for your time.

THE WITNESS: Thank you.

MS. ZASTROW: Your Honor?

HEARING OFFICER HALSTEAD: Yes, Ms.~Zastrow?

MS. ZASTROW: The level of -- I'm trying

to think of the appropriate words here.

HEARING OFFICER HALSTEAD: Are you about to make an argument?

MS. ZASTROW: I'm about to make an argument that they want to call Dr.~Sheep now when he was not listed in their case in chief.

MS. BRADLEY: Well, I have a response to that, and I'm glad to put a record --

MS. ZASTROW: Ms. Bradley, let me finish. Let me finish. And I understand Ms.~Halstead is likely going to allow you to call this witness, but I get an opportunity to make a record.

I object. You want to dictate -- and when I say "you," I mean the Board -- you want to put in evidence which you think helps your case --

HEARING OFFICER HALSTEAD: You can direct your comments to me, Ms. Zastrow. You know that.

MS. ZASTROW: I'm talking about the Board, Your Honor, to you. I'm sorry. I'm looking at you, Your Honor.

HEARING OFFICER HALSTEAD: Okay. You keep saying "you," but you're referring to the Board. I want to be clear what we're talking about.

MS. ZASTROW: I'm talking about the insanity with this case. I'm talking about the fact

that they want to call -- cherry-pick witnesses, cherry-pick documents in their case in chief.

They had the opportunity to list Dr.~Sheep as a witness, and they didn't do it. And now they want to call him. I don't know what he's going to say. I have no idea what he's going to say. I can't wait to cross-examine him, but I think it's entirely inappropriate.

We have no notice of this witness, no opportunity to prepare. We were given his letter. He wasn't brought up on any charges.

The Board is required to list their documents, witnesses, summarize the testimony, and they didn't do that. They get to cherry-pick and they get to decide what comes in the record.

They put Dr.~Sheep's letter in the record that has confidential information in it. They put medical records in the record with Patient A's name. They want to cherry-pick what happens in front of you, and they want to handcuff me and my client in our ability to provide an adequate defense.

It's not right. All for a recordkeeping situation that we admitted to.

What's Dr.~Sheep going to do? He's going to come in here and CYA. That's what he's going to

do. And I just want that noted for the record. And I'm going to cross-examine him.

But I object to them being able to call him. We had no notice of this witness. They had every opportunity to call him in their case in chief, and they didn't do it. This violates their own rules and it violates basic due process.

HEARING OFFICER HALSTEAD: Thank you, Ms.~Zastrow.

Ms.~Bradley, please say your basis for calling a rebuttal witness on the record, and then you can proceed with your witness.

MS. BRADLEY: Thank you.

Until yesterday, the Board had received a response from, Mr. McCleve that said "Prior to solidifying a formal written agreement with any med spa owner or Dr.~Sheep," that's what he said. That's the start of that paragraph on page 2, in the email that he provided to the Board investigator.

So we believed, based on that statement and this response, that he was not asserting that Dr.~Sheep was supervising him on the day that this -- these services were provided at the hospital location while he was on shift at the hospital. And so that was our belief.

We had -- we had no understanding that he was going to now say that Dr.~Sheep was supervising him during this time. Dr.~Sheep had, I guess, implied that any services he provided in the cosmetic realm were authorized.

And so the intent here is just to -- we would have called Dr.~Sheep, we would have been glad to call Dr.~Sheep as a witness. We didn't think we needed him because we thought that Mr. McCleve was not relying on him as a supervisor at this time, based on what he said.

And so now that he's saying that he was supervising him during this time, and he also testified earlier today that everything that Dr.~Sheep stated to the Board in Exhibit 4 is untrue, I think Dr.~Sheep can directly rebut that, and I think he has that right.

But, specifically, the issue here is we didn't know that he thought he was -- or he was going to assert that he was supervised by Dr.~Sheep when he provided the Xeomin injections to Patient A on April 8th at North Vista Hospital.

HEARING OFFICER HALSTEAD: Okay. So I note NRS 622A.380, section 5 -- or, I'm sorry, Section 1(i), provides:

"After the prosecutor and licensee had presented their cases, the regulatory body or hearing panel or officer may allow the prosecutor and licensee to call rebuttal witnesses. If the prosecutor or licensee or both call one or more rebuttal witnesses, each rebuttal witness must be sworn in and questioned in the same manner as provided in paragraph (f) or (g), as appropriate."

So even though you did not put on a case, Ms. Zastrow, we did have you -- we agreed that you would present Mr. McCleve within the case in chief, and so that does entitle the IC to rebut that.

And, Dr.~Sheep has been called in relation thereto, so I will allow him to be presented as a rebuttal witness at this time.

MS. ZASTROW: Thank you, Your Honor. For the record, can I just make further comment?

HEARING OFFICER HALSTEAD: Briefly.

MS. ZASTROW: Thank you. Because there were a lot of things that were said that were just inaccurate. And as I said when I was making my objection, I understood that you would allow the testimony, and I honor that. And I think that they should be allowed to put on their case within the bounds of due process and the rules.

Ms.~Bradley just said they had no idea what Mr. McCleve was going to say. They had the records. They have the supervisory records. They put them in evidence, Your Honor. So it's a complete fallacy to say that they were not aware that Dr.~Sheep was one of his supervising doctors.

We have the records, they've put them in evidence, and it's not my fault that they did an incomplete investigation. So I would -- I'm happy to cross-examination -- I'm happy to cross-examine Dr.~Sheep. I see that he's in the room. He shouldn't be listening to this.

HEARING OFFICER HALSTEAD: Well, no one invoked the rule of exclusion, and no one asked that he be let out.

MS. ZASTROW: Your Honor, I didn't see that he was in the room until just now. I couldn't invoke a rule if I didn't know a witness was in the room.

HEARING OFFICER HALSTEAD: We're all looking at the same screen.

MS. ZASTROW: No, Your Honor, we're not. My screen vision is different than yours. It doesn't matter. Your Honor, I'm done.

HEARING OFFICER HALSTEAD: All right.

Dr.~Sheep, can you put on your video and your audio, please?

Thank you. Can you please raise your right hand and be sworn?

(The oath was administered.)

HEARING OFFICER HALSTEAD: Thank you.

Ms. Bradley, your witness.

MS. BRADLEY: Thank you.

DIRECT EXAMINATION IN REBUTTAL

BY MS. BRADLEY:

Q. Dr.~Sheep, would -- who is your employer?

A. Team Health.

Q. And are you a physician licensed in the state of Nevada?

A. I am.

Q. How long have you been licensed?

A. In Nevada, since 2019.

Q. Were you licensed anywhere prior to coming to Nevada?

A. I was licensed in North Carolina, Pennsylvania -- I believe that's it.

Q. And have you -- but what kind of services did you provide in those other states when you were licensed?

A. Emergency medicine.

Q. And is that your expertise?
A. It is.
Q. Are you board-certified in emergency medicine?
A. I am.
Q. Are you familiar with Mr. McCleve?
A. I am.
Q. How are you familiar with him?
A. Kayle is a friend, and we worked together as well. We met initially, I don't know, maybe 2020, and we spoke quite often about doing esthetic procedures together.
Q. Okay. At any time have you supervised Mr. McCleve with regard to emergency medicine services?
A. Not in regards to emergency medicine services.
Q. So I'm looking at a copy of -- a blank copy of the supervision agreement. I can, perhaps, send that. I don't know if you have access to that. I can tell you how to get there or I can send it to you in the chat, I think. I don't know that I have an option.
The blank supervision form has been admitted. If you're on a computer, I can tell you

how to get there, but --

A. I can see it.

Q. Okay. You can see it. All right.

So do you recall completing a form like this with Mr. McCleve?

A. I -- do I recall? I mean, I know I did fill out a form like this; I don't know that I recall filling it out. But, yeah, I'm sure I filled out a form like this.

Q. Okay. And then if we look at the first part, those are statements by the supervising physician. Is that fair to say?

MS. ZASTROW: Your Honor, I apologize, can I ask Ms.~Bradley to send me the link again or tell me? I had closed out of that web document and I don't have a printed copy, so I need to --

MS. BRADLEY: Yeah. And I'm probably struggling. I don't know if I have access to chat. I'd be glad to send it to you in the chat. I think that'd be easier.

MS. FUENTES: If I may, I could send -- I have a copy. I downloaded the PDF when it got added as an exhibit, and I can send that to everybody.

MS. ZASTROW: Thank you, Mercedes.

Sorry to interrupt.

MS. BRADLEY: That's fine. So I'm going to wait a second, then, until that's received by you, Ms. Zastrow, if that's all right.

MS. ZASTROW: Okay.

MS. BRADLEY: I just received an email from Ms. Fuentes with that attachment. I'm hoping everyone else did.

MS. ZASTROW: I'll let you know when I do. Thank you.

I have it, thank you.

MS. BRADLEY: We're still on the record. Correct?

HEARING OFFICER HALSTEAD: We are still on the record, yes.

BY MS. BRADLEY:

Q. Dr.~Sheep, are you looking at that blank supervision form now?

A. Yes, ma'am.

Q. The first part of that form, whose name starts at the top of that form where it says "Comes now"?

A. I'm assuming that -- I think that's where my name goes.

Q. Okay. So as a physician, your name would go there. And then there's some statements in this

saying your role, essentially, in supervision?
A. Right.
Q. Okay. Let's look at the last sentence there that says "Upon receipt of same," would you read that for me?
A. "Upon receipt of same, I will be supervising the following-named physician assistant at the following practice locations."
Q. And when you completed agreements -- have you done other supervision agreements?
A. I have.
Q. What practice location do you include in that section?
A. For the other PAs, it's been within the Team Health system, so usually Sunrise Hospital & Medical Center.
Q. Okay. So that's the address that's on there?
A. That's right.
Q. And so for those other physician assistants, you're saying you're going to supervise the care that they provide at that location. Is that true?
A. Yes.
Q. For Mr. McCleve, what address would have

been included on the supervision agreement that you completed?

A. I don't recall.

Q. Would it have been Sunrise Hospital?

A. No.

Q. Would it have been Vista -- North Vista Hospital?

A. No.

Q. And why not North Vista Hospital?

A. Because the agreement between Mr. McCleve and I was for me to supervise him on esthetic procedures.

Q. Okay. Would you have authorized him to perform esthetic procedures in any location he wanted?

A. I'm sorry. Can you repeat the question?

Q. Was your supervision of his esthetic procedures at any location he chose?

A. I don't exactly remember where I -- what the location was where I agreed to supervise him.

Q. But you know it wasn't North Vista Hospital?

A. It was not.

Q. Did Mr. McCleve talk to you about the -- Patient A in this case?

A. No -- well, I mean, afterwards, yes, but not before.
Q. Not before. Okay.
Did you prepare a response to the Board? It's Exhibit 4. I believe you have that.
A. Yes. You sent that to me.
Q. Okay. So let's look at Exhibit 4.
A. Okay. I have it up.
Q. Okay. And do you remember preparing that?
A. Vaguely, yes.
Q. Would it have been true and correct at the time that you submitted it?
A. Yes.
Q. And I'm looking at number 2 there, where it says "I have no knowledge." Can you read that for me?
A. "I have no knowledge of Mr. McCleve's care regarding the above complaint, as I no longer had a professional relationship with him from October 1, 2021, onwards."
Q. So if Mr. McCleve provided cosmetic services after October 1, 2021, were those services that you would have authorized?
A. No.
Q. And are you familiar with the requirements

for being a supervising physician for a physician assistant?

A. I'm not intimately familiar, but yes, I am familiar.

Q. So, for example, do you talk to the physician assistants that you supervise?

A. I do.

Q. How often?

A. Every month or two.

Q. Okay. So you talk with them at least monthly.

Do you review selected patient charts that they have provided care on?

A. I do.

Q. Are you available by telephone if they need to consult with you while they're providing care?

A. Yes.

Q. And if you did, let's say, go out of the country, let's say you went to Mexico for two weeks, do you have a backup person designated to supervise them while you're unavailable by phone?

A. That's a good question. I don't know the answer to that.

Q. So your testimony -- so on April 8, 2023,

when is the last time that you've had a meeting with Mr. McCleve regarding his patient care, essentially, cosmetic patient care?

A. As of 2023, when was the last meeting? I don't remember.

Q. But in your statement to the Board, you said you no longer had a professional relationship from October 1, 2021. Right?

A. That's correct. Yes. I mean, I have talked to Mr. McCleve after October 1, 2021, but not in a professional manner.

Q. Yes. So you were friends, but as far as supervision of the patient care he provided, you were not having those conversations after October 1, 2021?

A. That's correct.

Q. And you were not reviewing selected charts for cosmetic services that he may have provided after October 1, 2021?

A. That's correct.

Q. Now, it does look like there was still an agreement with you on file at the time this incident occurred, and I think you say that in here. Can you explain that for me?

A. Yeah. My -- so my understanding was after

October 1, 2021, Dr. Roberts was going to be Mr. McCleve's supervising physician. And I should have looked into it, but I didn't. I didn't realize I had to, like, un-designate myself as a supervising physician.

Q. But you know that you weren't supervising him anymore after that date because you didn't have professional conversations with him regarding his care after October 1, 2020?

MS. ZASTROW: Objection. Leading.

THE WITNESS: That's right.

MS. BRADLEY: Ms. Halstead, I don't know if you want me to address the objection that Ms. Zastrow made?

HEARING OFFICER HALSTEAD: So he already answered, and it's -- you know, it's -- I think it was just a clarifying question, so I'm going to overrule the objection. And he already answered.

But just, Dr. Sheep, so you're aware, when there's an objection pending, you need to wait until there's a ruling on it before you respond.

THE WITNESS: Understood.

BY MS. BRADLEY:

Q. Do you recall, perhaps, if the location where you were supervising Mr. McCleve's provision

of cosmetic services was a place called "My Shape Lipo"?

A. It was called "My Shape Lipo."

Q. Were you supervising the provision of care of cosmetic services that he provided at any other location than My Shape Lipo?

A. That's a good question. I may have been also his supervising doc at a place called -- well, there was Vita Spa, and then there was another place where he helped me do liposuction procedures that I can't recall the name off the top of my head.

Q. Okay. But that was prior to October 8, 2023?

A. That's right.

Q. And so you've had a chance to read Exhibit 4 again --

HEARING OFFICER HALSTEAD: Ms. Bradley, I'm sorry to interrupt you, but just so the record is clear, I think you just said that that was prior to October 8, 2023, if I heard you right?

MS. BRADLEY: Oh. You did. I'm sorry. I should have said -- I meant to say that was prior to April 8, 2020 -- prior to October 1, 2021. I apologize. That's what I meant to say.

BY MS. BRADLEY:

Q. Dr. Sheep, what is -- what was your response, I'm sorry, with the date updated?

A. Prior to October 1, 2021, yes, I -- we had a professional relationship, and I was supervising him.

Q. How do you authorize your physician assistants, the ones you supervise, to provide services?

A. So when -- a part of being employed by Team Health as a physician, you are required, after a certain amount of time there, to supervise APC's events, practice clinicians. So it's -- it's part of being employed by them, basically.

Q. But how do you communicate to the person you're serving -- you're supervising what services they can perform on there?

A. So when we sign up to be a supervising physician, I believe there is a list of procedures and things they are credentialed to do within emergency medicine.

Q. So you would not authorize a physician assistant to perform a procedure that's not listed on the credential list?

A. Yeah, that's correct.

Q. So let's look at -- so if we look at that blank supervision form that I think you have, there's a page 2 to it that includes some Nevada Administrative Code provisions.

A. Okay.

Q. So let's look at NAC 630.370, then there's a number 1, and then there is a "b" there. If you would read those to yourself, I want to ask you about that.

A. Okay. I read it.

Q. Were the services that Mr. McCleve provided to Patient A on April 8, 2023, services that you had approved him to provide at North Vista Hospital?

A. No.

Q. Let's look at the regulation at the bottom of the page there, NAC 630.360, and let's look at number 1.

A. Um-hmm.

Q. So, again, were the services that Mr. McCleve provided on April 8, 2023, authorized by you?

A. No.

MS. BRADLEY: I believe that Dr. Sheep does have a copy of the supervision agreement that

was on file at the time with Mr. McCleve. I'd like to ask him some questions about that and then move for admission. I'm sure there'll be an objection, but --

THE WITNESS: Which exhibit?

BY MS. BRADLEY:

Q. It's the supervision agreement that's actually got -- it's filled out. So it's the same form we were just looking at, but it's filled out with writing in it. And I believe you have a copy of that supervision agreement. It's got, I think, maybe your handwriting. It says "Andrew Sheep" at the top.

A. Where? I don't believe I have that.

MS. BRADLEY: Can I have a moment to ensure that Dr.~Sheep is provided that document?

MS. ZASTROW: How about providing it to everyone, please?

MS. BRADLEY: I'm glad to provide it to everyone. I'll do that. I just didn't know if I could do that until I read it to him and asked for it to be admitted. I'm glad to provide it to everyone.

If I could have a minute for Ms. Fuentes to get that distributed, I would appreciate that.

HEARING OFFICER HALSTEAD: Do you want to stay on the record, or do you want to take a small break?

MS. BRADLEY: Let's do a small break, maybe five minutes. I'm just going to mute myself.

HEARING OFFICER HALSTEAD: Okay. So we'll come back on it at 3:40.

(Recess from 3:32 p.m. to 3:40 p.m.)

HEARING OFFICER HALSTEAD: We're back In the Matter of the Charges and Complaint Against David Kayle McCleve, PA-C, case number 24-42281-1.

We were in the midst of a rebuttal case for the IC, whereby Dr. Andrew Sheep was testifying on direct. We've now been distributed a document that I believe we've all received at this point.

Ms.~Bradley, I'll let you address it from there.

MS. BRADLEY: Thank you.

BY MS. BRADLEY:

Q. Dr.~Sheep, I'm asking you to look at a document that's not been admitted. It says "Notification to Nevada State Board of Medical Examiners of Supervision of Physician Assistant," and it has handwriting on it that I believe might be

your handwriting and maybe Mr. McCleve's as well.

A. Yep.

Q. All right. So you're looking at that now. Does that appear to be a true and correct copy of a document that you would have signed?

A. It does.

Q. Okay. And there's a signature that says "supervising physician," is that your signature?

A. It is.

Q. And there's an address listed on this agreement. Would you read that into the record?

A. It's --

HEARING OFFICER HALSTEAD: Before he reads anything into the record, it would require the document to be admitted.

MS. BRADLEY: Sorry.

HEARING OFFICER HALSTEAD: Otherwise, you can refresh his recollection, perhaps. I'm not sure what your intent is.

MS. BRADLEY: I meant -- I misstated, I apologize.

BY MS. BRADLEY:

Q. So this appears to be a true and correct copy of a document that you signed regarding your supervision of Mr. McCleve?

A. Yes.
Q. Okay. And I think we've talked about the dates of the supervision. I think those are on this document as well. Can you tell me the date that it says that it was signed?
HEARING OFFICER HALSTEAD: Ms.~Bradley, he's testifying as to the content of a document that hasn't been admitted. You can authenticate it, admit it, and then it can say what it says, or you can use it to refresh his recollection.
MS. BRADLEY: My intent was -- I'll just rephrase.
BY MS. BRADLEY:
Q. The records of the Board in Exhibit 7, Dr.~Sheep, show that your supervision with him began on March -- this says "16, 2021" in the Board record. Does that appear to be a consistent time frame with the information in this document?
A. Yeah. It's within the week of the document I signed.
Q. And it looks like I received something included with mine that's also something that says "Notice of Termination of Supervising Collaborating Agreement." Do you see that?
A. Date of association?

Q. No. I'm sorry. I'm back on the agreement -- the document that was sent to you. Because I think the document that was sent to you is two pages. Do you have two pages?

A. I do.

Q. And so the first page is something you signed about supervision. And then the second page, it says "Notice of Termination of Supervising Collaborating Agreement"?

A. Right.

Q. And does that also have your name and your signature on it?

A. It does.

Q. And does that appear to be a true correct document of something that you prepared and signed and sent to the Board?

A. It does.

MS. BRADLEY: Based on Dr.~Sheep's testimony, I would ask that this be admitted into evidence as -- I think it would be the Board's Exhibit 12, technically.

HEARING OFFICER HALSTEAD: Ms. Zastrow?

MS. ZASTROW: Joint exhibit. I would like to submit it as well. No -- no objection.

HEARING OFFICER HALSTEAD: Okay. So I'm

going to mark this as Exhibit 12, it's going to include both pages referenced, and it will be admitted.

(Joint Exhibit 12 admitted.)

BY MS. BRADLEY:

Q. So Dr.~Sheep, would you look at -- on the first page of that document where the supervision began, there's a location. What is that address listed there?

A. It looks like 10521 Jeffrey Street meeting room, Henderson, Nevada 89052.

Q. And do you recall, upon reading that address, where that address is?

A. Yeah. It was -- I can't remember the name of the med spa it was, but yes, I recall.

Q. And so based on this agreement, your supervision was going to occur at that location?

A. Yes, that's right.

Q. Do you see any reference to you supervising Mr. McCleve's provision of services at North Vista Hospital --

A. I don't.

Q. -- in conjunction with your supervision?

A. No.

Q. And is that something you would have ever

authorized?

A. Is -- what would I have authorized?

Q. Would you ever have authorized Mr. McCleve to provide cosmetic services at a hospital to a patient that's not registered at the hospital -- not a hospital -- not a patient of the hospital?

A. No.

MS. ZASTROW: Objection -- Your Honor, objection to the hypothetical. I have no objection if she wants to ask if he would -- if he was aware of a Botox injection.

MS. BRADLEY: I didn't ask that. I was asking if he would have ever authorized Mr. McCleve to perform cosmetic services at a hospital.

MS. ZASTROW: Okay. Hypothetical. I'll withdraw the objection.

HEARING OFFICER HALSTEAD: Thank you.

BY MS. BRADLEY:

Q. So, Dr.~Sheep, I think you get to answer.

A. No, I would not have.

Q. So in this case, at any time, did you authorize Mr. McCleve to provide cosmetic services at North Vista Hospital?

A. No.

Q. And does this agreement specify anything

regarding services in other locations than the one specified?

A. No. Although, I supervised him at other locations, including at Vita Spa and at My Shape Lipo.

Q. Okay. But we don't recall, maybe -- or can you say for certain that this address is not either of those?

A. That address is not either of those, that's correct.

Q. It's with a different address?

A. It is.

Q. Do you recall why you sent in the termination on June 14, 2023?

A. I'm sorry. Can you repeat that?

Q. I wondered if you remembered why you prepared the Notice of Termination of Supervising Collaborating Agreement, that's that second page there. And it looks like you dated it on June 14, 2023. Do you remember why you created this form and submitted it to the Board?

A. Yeah. That's when I found out I was still Mr. McCleve's supervising doctor.

Q. Okay. So you're you were trying to update the Board's records, it sounds like?

A. That's correct.
Q. When you were supervising Mr. McCleve, did you observe the treatments that he provided?
A. I did.
Q. And so it sounds like you were comfortable supervising him until you terminated the agreement, is that fair -- or not until you terminate the agreement, but until October 1, 2021, you were comfortable supervising him?
A. I was.
Q. Did you ever say anything to him on October 1, 2021 --
HEARING OFFICER HALSTEAD: Hold on, Ms.~Bradley.
Is there -- I don't know why we don't have Mr. McCleve's video anymore.
MS. BRADLEY: Oh.
HEARING OFFICER HALSTEAD: Thank you.
BY MS. BRADLEY:
Q. Did you have a conversation with Mr. McCleve that you were terminating the professional relationship on October 1, 2021?
A. We had a conversation that I was leaving My Shape Lipo. Was there a conversation that I was terminating the supervising agreement? I don't

think so. I don't recall, though.

Q. But you had a conversation that you were leaving My Shape?

A. Yes.

Q. And were you going to be providing cosmetic services any more after that date?

A. No. My counsel at that time had advised me not to.

Q. And did you talk to Mr. McCleve about that?

A. Yes.

Q. So he was aware that you were leaving My Shape; you were not going to provide cosmetic services any further?

A. I don't know that he was aware of that. I -- I mean, to be completely honest, I don't recall the conversation.

Q. How did you pick the October 1, 2021, date that's in your response to the Board, if you recall?

A. I was speaking to my attorney at that time, Mr. Pomerantz, and he couldn't tell me why, but he said to get out of My Shape Lipo as soon as I could.

Q. Okay. So October 1, 2021, is when you left My Shape Lipo?

A. Yeah. He probably told me, like, in mid-September. So I told Trevor, hey, I'm going to be leaving, find someone else.

Q. But Mr. McCleve knew that you weren't working at My Shape Lipo anymore after October 1?

A. I believe he did.

MS. BRADLEY: I have no further questions for Dr. Sheep at this time.

HEARING OFFICER HALSTEAD: Thank you.

Go ahead, Ms. Zastrow.

MS. ZASTROW: Thank you.

CROSS-EXAMINATION

BY MS. BRADLEY:

Q. Dr.~Sheep, my name is Lisa Zastrow. It's nice to meet you.

A. Nice to meet you.

Q. I'm Kayle's lawyer.

Did you know that your email had been placed into the public record in this case before yesterday?

A. Did I know that my -- I don't know that I knew that.

Q. Okay. Who contacted you to come and testify today?

A. I'm -- I don't recall the name. I can

look at my text if that would be helpful.

Q. You received a text message?

A. It was -- no, I'm sorry. I got called yesterday from Deonne.

Q. And what did she say to you?

A. She said that -- what did she say? She said the Board investigating Mr. McCleve wanted me to testify. I that was essentially the message.

Q. You actually spoke to her or it was a message?

A. I spoke to -- I believe it was Deonne I spoke to.

Q. What'd she say exactly?

A. I don't recall. It was something along the lines of: There is a board investigation against Mr. McCleve, and would you be available tomorrow to testify?

Q. She didn't tell you what it was about?

A. It was basically about the Board investigation into Mr. McCleve.

Q. What investigation did she tell you?

A. She told me it was regarding an incident of injecting a neuroparalytic into a patient and a bad outcome from that.

Q. She said a "bad outcome" from that?

A. I don't know that she said a bad outcome, but I it was the -- that was the gist of the conversation. I don't recall exactly the words.

Q. But the conversation was yesterday, and you don't recall it?

A. Well, I don't recall the exact words. I recall the gist of the conversation.

Q. Well, you just said the gist of the conversation when she told you that a patient had a bad outcome. Did she tell you that?

A. Well, she sent me -- I got an email with all the exhibits that I went through.

Q. She gave you patient records?

A. She sent me exhibits. She sent me nine, ten exhibits. It was sent from Mercedes, Mercedes Fuentes.

Q. Oh, did she -- do you have those exhibits in front of you?

A. I have ten exhibits in front of me, yes.

Q. Okay. So she sent you Exhibit H, which were the medical records of a patient whose name's identified in those records?

A. I did not get anything regarding patient records. I mean, I can look again, but I don't think there was anything on patient records in here.

Q. You got nine exhibits?
A. I got ten exhibits.
Q. Ten exhibits. Okay.
If I told you there were ten exhibits in this case until today and that one of those included patient records, would you have any reason to disagree with that?
A. Would it be okay if I went through and see if there were patient records? I do see that the patient's name is in here.
Q. You do see that. Right?
A. I do see a patient's name, that's correct.
HEARING OFFICER HALSTEAD: And -- sorry, Ms. Zastrow.
Doctor, just so you know, not to use the patient's name, we're referring to the patient as "Patient A."
THE WITNESS: Okay.
BY MS. BRADLEY:
Q. The Medical Board told you the patient's name. Correct?
A. Yes, that's correct.
Q. And they gave you patient records. Correct?
A. I don't know that they sent me a patient

records.

Q. I'll give you a minute to look.

A. Okay.

Q. If they did, would that be a HIPAA violation?

A. Would that be a HIPPA violation?

MS. BRADLEY: I'm going to object. I don't think he's an attorney.

THE WITNESS: Yeah, I don't know.

MS. BRADLEY: That's a legal question.

MS. ZASTROW: No, it's not. He's an MD. He's required to know. The MDs -- you called this witness on the fly.

HEARING OFFICER HALSTEAD: He's a witness at a Medical Board hearing, and those are part of the exhibits.

THE WITNESS: To answer your question, I'm not sure if that would be a HIPPA violation.

BY MS. ZASTROW:

Q. Are you not familiar with HIPPA?

A. I am familiar, yes.

Q. Okay. What's HIPPA?

HEARING OFFICER HALSTEAD: Ms. Zastrow, I'm not going to entertain this line of questioning.

MS. ZASTROW: Your Honor --

HEARING OFFICER HALSTEAD: He's -- I understand you want to make your record. He's a witness. These are exhibits in the hearing. These are the exhibits that all the witnesses have seen. Not just him, everybody.

MS. ZASTROW: No, Your Honor, not everybody. Employees of the Medical Board, those that have access to the confidential file, not lay witnesses.

I've had zero time to prepare for this witness. I'm doing the absolute best that I can, and I would just request a little bit of patience. And I'll do my best to show the witness and Your Honor some grace, but he is the first lay witness who's been given confidential medical records.

THE WITNESS: Um --

HEARING OFFICER HALSTEAD: Dr.~Sheep, you're not answering.

I'm not going to entertain a line of questioning about whether or not this is a HIPAA violation. You can move on from that.

THE WITNESS: Just to clarify, there were only nine exhibits. Exhibit 8 was not included, so it's 1 through 7 and then 9 and 10.

BY MS. ZASTROW:

Q. Okay. What were you told that you were going to be testifying about today?

A. What I was asked was if I would testify regarding being a supervising physician to Mr. McCleve.

Q. Were you told that you would not be brought up on any charges?

A. Not exactly. I asked, like, do I need a counsel? Am I under investigation? And I was told, no, I was not.

Q. So the answer is yes, you were told you're not under investigation and to come and testify today. Correct?

A. That's correct.

Q. You were told you don't need counsel. Correct?

A. That is correct.

Q. And that you could come here today and testify without the need for counsel. Correct?

A. That's correct.

Q. Okay. Look at Exhibit 12, please.

A. Okay. Exhibit 12. Is -- sorry, I apologize. Which one is Exhibit 12?

Q. It's your agreement.

A. Oh, okay. Yeah. Got it.
Q. The second page of that, do you see that notice to the Board?
A. Yes.
Q. Dated June 14, 2023?
A. Yes, ma'am.
Q. Can you see the notes below there?
A. Notes below?
Q. Do you see "note"?
A. Yes, I see it.
BY MS. ZASTROW:
Q. Can you please read the first sentence under the note?
A. "Per NAC 630.360 4, a physician assistant shall notify the Board in writing within 72 hours after any change relating to a supervising physician."
Q. Can you read the second one?
A. "For NAC 630.495, a collaborating physician shall immediately notify the Board of the termination of collaboration between the collaborating physician and an advanced practice registered nurse."
Q. So per Nevada law, you were required to give immediate notification to the Medical Board

when your collaboration with Mr. McCleve ended. Correct?

A. That's correct.

Q. And you just testified -- and you were told you didn't need a lawyer to be here to testify. Correct?

A. That's correct.

Q. You're in violation of that rule. Correct?

A. In violation?

Q. Let me -- let me withdraw that.

You're actually not in violation of that rule, are you, because you continue to discuss with Mr. McCleve collaborating on boutique medicine, didn't you?

A. We discussed it.

Q. In fact, that was the first thing you said upon questioning by Board counsel. You said specifically you spoke quite often about doing esthetic procedures together. That's what you said. Correct?

A. I don't know if it was quite often, but we did discuss it, yes.

Q. Those were your words. I typed them.

A. I see.

Q. So you talked about doing esthetic medicine with Mr. McCleve. Correct?
A. I did.
Q. Okay. And that did not include lipo, did it?
A. We talked about lipo mostly, yeah.
Q. So if Mr. McCleve said you wanted to get out of lipo because [redacted] you wanted to transition into boutique medicine with things such as injectables and weight loss medication, would you disagree with his testimony?
A. I wouldn't disagree with that.
Q. You wouldn't call him a liar, would you?
A. Kayle's not a liar.
Q. Can you repeat that?
A. I said Kayle is not a -- Mr. McCleve is not a liar.
Q. That's okay. Kayle is not a liar, is he?
A. He's not.
Q. If he testified that the two of you kept a relationship and talked about doing boutique medicine, would you have any reason to disagree with that?
A. No, we did discuss it.

Q. You didn't supervise Mr. McCleve at Vita Spa, although you just said you did. Did you misspeak?

A. I may have misspoken, yeah. I mean, I knew Kayle around the time I was at Vita Spa. Whether I was -- I don't -- I don't think I actually was his supervising physician of Vita.

Q. So you misspoke?

A. I did.

Q. You didn't lie; you misspoke. Right?

A. I did misspeak. That's correct.

Q. All right. Let's go back and look at that supervising agreement. That's Exhibit 12. Can you pull that back up?

A. Yep, I have it.

Q. All right. There's an address on there. You said that's not the address where you were always working, was it?

A. No, it wasn't.

Q. Okay. Do you know if you're required to tell the Board every time you change an address here or there, or --

A. I don't know that.

Q. You worked with Kayle at multiple locations at some point in time. Correct?

A. That's correct.

Q. [redacted]

A. [redacted]

Q. W[redacted]

A. [redacted].

Q. Did you feel like the Medical Board was coming down on MDs related to cosmetic procedures?

A. Yeah, that's accurate.

Q. Including PAs such as Mr. McCleve?

A. Yeah, that's accurate.

HEARING OFFICER HALSTEAD: Mr. McCleve, just so you know, the affirmations with the head movements, all that stuff, it needs to stop. Thank you.

MS. ZASTROW: Sorry. I can't even see that. And I would ask the same of Ms.~Bradley. And I'll try myself as well.

HEARING OFFICER HALSTEAD: Well, I happened to notice that with Mr. McCleve at that moment, but it obviously goes to everybody.

MS. ZASTROW: Thank you, Your Honor.
BY MS. ZASTROW:
Q. Do you recall Kayle coming to your house talking about going into -- I'm using the phrase "boutique medicine," but he would describe it -- or he testified about you two talking about doing injectables, weight loss, genetic medicine, that sort of thing. Is that true?
A. Yep, that's true.
Q. When you met with Kayle, you met with him in your home or his home at some point in the spring of 2023. Do you recall that?
A. Yes, I did meet at his home. He may have come over here, I'm not entirely sure about that, but I definitely went to his house.
Q. Do you recall telling him that the two of you still had a supervising agreement on file with the Board?
A. I do not recall that, no.
Q. If he recalls that and he testified to that, would you have any reason to disagree with him?
A. Sorry, if he testified that I said what?
Q. That in one of those meetings when you were discussing your business venture, you said --

you reminded him that you still had a supervising agreement with him?

A. I don't recall that.

Q. If he does, and that's his testimony -- you said he's not a liar -- would you have any reason to disagree with that?

A. I don't recall saying that. I've never heard -- Kayle has never lied to me that I know of, so I -- I don't want to call him a liar, but I don't recall him saying -- I don't recall myself saying that to him.

Q. When you left My Shape Lipo, you did so on the advice of counsel. Correct?

A. Yes, ma'am.

Q. You didn't tell Mr. McCleve that you were no longer going to be his supervising physician with respect to cosmetics, did you?

A. I'm not sure I told -- I mean, I definitely told him I was leaving My Shape because of what my attorney told me. I don't recall the conversation regarding my supervising of him.

Q. Okay. When you met with Kayle and you had conversations with him -- let me just back up.

You had ongoing communications with him from the time you left My Shape Lipo until this

incident occurred, didn't you?
A. Yes.
Q. And you discussed business and going into boutique medicine and working together. Correct?
A. That's correct.
Q. And if we had your text messages, for example, that would confirm that?
A. It would.
Q. And phone records, that would confirm that?
A. I'm sorry, what was that?
Q. Phone calls, phone records, that sort of thing?
A. Correct.
Q. Okay. When you found out about this patient -- you spoke to Kayle after this happened, didn't you?
A. I did.
Q. You didn't say to him at that time, uh-oh, I should withdraw my supervising agreement, did you?
A. No.
Q. You knew you still had one, didn't you?
A. I did not know.
Q. You did not know?
A. I should have known. But I -- at that

time, I didn't realize I was still his supervising physician.

Q. Then why were you discussing it?

A. The -- what do you mean?

Q. Why were you discussing it? Why were you discussing this patient?

A. Because we are both practicing ER providers, and we're friends.

Q. Weren't you discussing it because he was going to be a patient, a client?

A. Which one? The patient at North Vista?

Q. Yes.

A. No.

Q. You weren't aware that he was a client of a med spa?

A. I mean, after Kayle told me he was, I was aware.

Q. Who's Liliana?

A. Liliana owned a spa called -- I think it was called "Imagine." She was, like, a non-medical spa owner.

Q. And why did you know her?

A. Kayle had brought me when we went to meet with her to potentially discuss doing cosmetic procedures at her spa.

Q. Right. That was after 2001 after you left My Shape. Correct?
A. That's correct.
Q. And who is Rachel?
A. Rachel?
Q. Is she at Oasis?
A. The name sounds familiar, but I'm having trouble placing it.
Q. Also a med spa?
A. What was the name of the med spa?
Q. "Oasis."
A. Oasis. Got it. I don't -- did I meet Rachel? I'm not sure if I actually met Rachel. But yes, I recall that name.
Q. You were meeting with Kayle, med spa owners. Right?
A. That's right.
Q. And you were going to potentially go into business together doing this boutique medicine, injections, Botox, et cetera. Correct?
A. That's correct.
Q. Okay. If Kayle testified that you still had a supervising agreement and he was aware of that, would you have any reason to disagree with him?

A. Can you repeat that question?
Q. If Kayle testified that he was aware that you still had a supervising agreement, he had ongoing conversations with you about cosmetic practices and that you were going to go on to business together and this Botox treatment is something the two of you were going to do together, would you have any reason to disagree with that?
A. I don't think so, no.
Q. If he thought in his mind and he was aware that you still had a supervising agreement together, would you have any reason to disagree with that?
A. No.
Q. So if Kayle told the Hearing Officer that he understood that you still had a supervising agreement on file with the Medical Board, you would have no reason to question his testimony. Correct?
A. That's correct.
Q. And in Kayle's mind, if he testified you still have a supervising agreement, it was limited to those boutique services. Correct?
A. Yes.
Q. Kayle, you were never his ER supervising doc. Right?
A. That's correct.

Q. Although that form that is Exhibit 12, nowhere on that form does it say you have to list the scope of practice, does it?
A. I don't believe it does, no.
Q. You don't have to tell the Board, hey, we're going to start a lipo business, you don't have to tell the Board that in this form, do you?
A. No.
Q. You as the supervising MD, can your PAs do whatever you let them do?
A. Yes.
Q. Do they have to ask you permission every time they do anything?
A. Nope.
Q. In fact, let's say, for example, if you were Kayle's supervising physician and -- or let's just say a PA is working under your supervision and you're not at work that day, and they do ten fillers and ten Botox injections, do they have to call you every time and ask permission to do it?
A. No.
Q. They're authorized to do whatever you let them do. Correct?
A. Yeah. Authorized under the understanding that we had a discussion as to what their scope of

practice was. That's correct.
Q. Exactly. And based on their training, their skill, expertise. Correct?
A. That's correct.
Q. And that's all in Nevada law. Correct?
A. Yes.
Q. And they can be doing work and you're not there. Right?
A. That's correct.
Q. Have you been made any other promises to appear here today?
A. Up here where? Here, today?
Q. Here to testify, yes.
A. Just to testify today.
Q. Were you here under subpoena, or are you just voluntarily agreed because they said you don't need a lawyer?
A. I'm not here under subpoena, no.
Q. Is there anything else you can tell me about your conversation with Ms. Contine?
A. Miss who?
Q. Deonne.
A. No. She asked me if I would testify. And, I mean, to be completely frank, I wanted to testify because I -- I just -- I wanted, like, the

complete truth of the matter.

Q. Right. And I'm glad you're here, and I appreciate that.

You've been very truthful. Correct?

A. I have.

Q. And Kayle's truthful as well. Correct?

A. He is, yeah. I mean, let me just say, every time I supervised Mr. McCleve, he did excellent work, and he's an excellent physician. And he had excellent -- you know, I heard excellent things about him from his work in the ER too.

Q. Thank you for saying that.

You actually tried to help him get work last year, didn't you?

A. I did.

Q. You've been made aware there's another case against him by the Board. Right?

A. He told me.

Q. Knowing all that because of what you know his reputation to be, you know his skill set to be, you know his level of ethics to be, you still tried to help him get work, didn't you?

A. I did. The work I tried to get him help in was in the ER.

You know, I told him several times I

wasn't super comfortable with esthetics, especially being under investigation by the Board. I tried to get him a job in Arizona at an ER that I work at.

Q. Right. And you're still friends. Correct?

A. I consider Kayle my friend, yes. We haven't talked in a while, but yes.

Q. Are you still under investigation by the Board?

A. To be completely honest, I'm not sure. I haven't gotten a formal letter that I'm not.

Q. Do you think Mr. McCleve has the requisite skill, training, knowledge to perform Botox injections?

A. Yeah. Yeah. My understanding is that Kayle had had training in neurotoxins. And, I mean, he would show me -- you know, he would show me photos of his patients, and it looked like it was good work.

MS. ZASTROW: Your Honor, can I have just a couple of minutes to look at my notes, given this witness was just called?

HEARING OFFICER HALSTEAD: Yeah. Take your time. We'll remain on the record, and you can just look at your notes while we're on the record.

MS. ZASTROW: Thank you. I'm just going to close my camera and mute myself and just look at my notes real quick. I don't think I have anything else, but I want to make sure.

Your Honor, I don't have any more questions.

Thank you so much, Dr.~Sheep, for coming on and being honest on cross-examination.

THE WITNESS: You're welcome.

HEARING OFFICER HALSTEAD: Ms. Bradley?

MS. BRADLEY: Thank you. I just have a couple things.

REDIRECT EXAMINATION IN REBUTTAL

BY MS. BRADLEY:

Q. Dr. Sheep, you said that -- I think it's fair to say, based on what you said in response to Ms.~Zastrow, that you've been in communication with Mr. McCleve regarding his provision of boutique medicine since you've known him. Is that fair?

A. Yep, that's fair.

Q. Okay. But are those communications always considered supervision?

A. No.

Q. So it's possible that you and Mr. McCleve might discuss something as friends?

A. That's right.
Q. And you might discuss something as potential business partners?
A. That's right.
Q. And when you were actively supervising him prior to October 1, 2021, you would have discussed care he provided under your supervision?
A. That's right. And, I mean, I directly supervised him prior to October 1, 2021.
Q. With the conversation that you had with Ms. Contine yesterday, do you recall if she asked if you were represented by an attorney and if you wanted to have an attorney present?
A. I asked her: Am I under investigation and do I need counsel?
Q. Okay. Did she tell you you couldn't bring an attorney?
A. She did not say that. She just said, to her knowledge, that I wasn't under investigation currently and that I didn't need to have a counsel.
Q. But you could bring one if you wanted?
A. Yes.
Q. How long have you worked in emergency medicine?
A. I graduated residency in 2015, so about

10 years, a little over.

Q. Would it -- in your opinion, is it reasonable care to bring a person into the hospital --

MS. ZASTROW: Objection, Your Honor. This is not a standard of care expert. I know where she's going with this. Although I think he would be a good -- I object to this question.

HEARING OFFICER HALSTEAD: I'm going to overrule it. And here's why: Because you asked him about Mr. McCleve's capabilities and his ability to do his job with the injectables, you also -- it was also asked if -- I had it and I lost it. Sorry, it's fallen out of my head.

I think there was some groundwork, suppose that he was -- oh, here's what it was. He was his supervisor at one point; granted, he's not the peer reviewer, but he was his supervisor. So for that reason, I'm going to allow it.

BY MS. BRADLEY:

Q. Do you think it's reasonable care for a person -- a physician assistant to bring a person into the hospital emergency department area and provide medical services to that patient that are cosmetic in nature and the person is not registered

as a patient at the hospital? Is that reasonable care, in your opinion?

A. No.

Q. Have you ever heard of a physician assistant that you work -- you've worked with doing something like this?

A. No.

Q. Have you ever heard of a physician that you worked with doing something like this?

A. I think I had heard a story like that, but --

Q. Where someone brought an unregistered person into the hospital and provided cosmetic services?

A. Yeah. It was -- it was a physician that had his own practice on the side, and he brought a patient in. But I don't really know the details of the outcomes of that.

Q. Okay. But do you think that's reasonable care for that physician to do?

A. Do I think that? No.

MS. BRADLEY: I have no further questions for Dr. Sheep.

MS. ZASTROW: Your Honor, based on that last question, I'd like redirect.

HEARING OFFICER HALSTEAD: Go ahead. And then I have a couple questions you can both follow up on.

MS. ZASTROW: Recross.

RECROSS-EXAMINATION

BY MS. BRADLEY:

Q. Dr.~Sheep, you didn't review the medical records in this case. Correct?

A. No.

Q. You were asked a hypothetical about whether or not it would be reasonable care to bring in an unregistered patient to a hospital for cosmetic care. Just now, you were just asked that. Right?

A. I was asked, yes.

Q. Okay. I think the implication is that was it reasonable for Kayle to inject Botox at Vista? And it wasn't. Right? That was bad policy. He breached the rules there. Right?

A. That's correct.

Q. You didn't have privileges there, did you?

A. No.

Q. Okay. But you haven't been asked to analyze the standard of care in terms of the patient treatment, have you?

A. No.
Q. You don't know if the actual administration of the Botox fell below standard of care, do you?
A. I don't know the details, no.
Q. No. But we do know it was stupid for him to bring in a patient to Vista hospital and inject Botox. Correct?
A. I -- I don't know if "stupid" is the word I would use.
Q. What word would you use?
A. It's -- what word would I use? I don't know.
Q. I'll withdraw the question.
A. Okay.
Q. It was a violation of hospital policy. Correct?
A. It -- I'm sure it was, yes.
Q. But you don't know that it fell below the standard of care in terms of the actual administration, injecting Botox?
A. Yeah, I'm probably not qualified to speak on standard of care regarding Botox.
Q. Well, and you didn't review this patient's records. Right?

A. That's correct.
Q. Did you know Vista did?
A. I don't know that.
Q. If I told you they did, would you defer to them and --
MS. BRADLEY: I'm going to object. I don't think anything in the record says that Vista reviewed medical records for this patient.
MS. ZASTROW: It's their records.
MS. BRADLEY: Well, they created records once the patient was in the emergency department, but there's nothing in the record that indicated they reviewed records regarding the cosmetic services the patient received prior to coming into the emergency room.
MS. ZASTROW: It's in Dr. Harris's letter to --
HEARING OFFICER HALSTEAD: Ms. Zastrow, can you just restate your question for me, please?
MS. ZASTROW: Let me restate it.
BY MS. ZASTROW:
Q. Dr.~Sheep, who would be in the best position to investigate whether or not Dr. -- or whether or not Kayle fell below the standard of care in the administration of the Botox? Would it be you

or would it be Vista Hospital?

A. It would not be me, that's for sure.

Q. Okay. If Vista -- if I told you that Vista Hospital investigated, and he lost his privileges, would you have any reason to disagree with that?

A. No.

Q. If I told you that Vista terminated his privileges because he violated policy, not because he violated the standard of care or committed malpractice, would that surprise you?

A. It would not surprise me.

Q. Can you lose hospital privileges without committing malpractice?

A. Yes.

Q. I was thinking about a case about 10 years ago. I don't know, you're kind of young. There was a doctor that brought in a gun, a loaded gun to UMC. I think he lost his hospital privileges, but that wasn't necessarily malpractice. Would that be a good example?

A. Sure. That sounds like a good example.

Q. And if we wanted to know if Mr. McCleve fell below the standard of care in administering the Botox injection, we'd have to look at those that did

that investigation, and you're not one of those people. Correct?

A. That's correct.

Q. In fact, you testified that he's a good PA. Right?

A. He is.

Q. Very good. Right?

A. He is.

MS. ZASTROW: I don't have any more questions.

EXAMINATION BY THE HEARING OFFICER

BY HEARING OFFICER HALSTEAD:

Q. Dr. Sheep, I have a question for you. So my -- and I don't want to misstate, I'm going to tell you what I've interpreted the evidence so far, and I'm sure the attorneys will correct me if I'm wrong.

What I understand is that you had conversations about going into boutique medicine together, and that one or both of you had been consulting local medical spas about how that was going to happen and when that was going to happen. Is that correct?

A. That's correct.

Q. And were you aware that Mr. McCleve was

going to take action with regard to that potential business venture at the time that he did the Botox injection for Patient A?

A. Which business venture?

Q. The one that you had been discussing. I don't know how far along you were in the discussions. Right?

So were you aware that, based on the discussions you had, Mr. McCleve was going to take action to start injecting Botox injections based on his understanding that you were going to have this business venture together?

A. I was aware that Kayle was doing stuff in the background in terms of boutique medicine. Like, I don't know that I was aware of the specifics.

Q. Okay. Well, what were you aware of?

A. I was aware that he was pursuing opportunities to work at Imagine, at Oasis, you know, performing esthetic procedures there.

Q. Okay. Were you aware that, based on the agreement that the two of you were discussing to have a business venture together, that he was going to start or had started, in this instance, giving a Botox injection?

A. No.

Q. And when is the first you learned of that?
A. I mean, probably when I found out about the Botox procedure at North Vista.
Q. So is it your testimony -- is it still your testimony that he did not do that under your -- I don't want to state that badly, and Counsel will clean this up if I'm stating things badly.
Is it your testimony that the Botox injection at issue to Patient A was not done under your supervision?
A. Yes, that is my testimony -- or I was unaware that I was his physician supervisor when that happened.
Q. Well, you thought your supervision had ended as of October 2021. Correct?
A. That's correct.
Q. And were -- and you weren't aware that he was going to start giving injections. Is that correct?
A. That's correct.
HEARING OFFICER HALSTEAD: Okay. Counsel, please follow up on those question.
MS. ZASTROW: Your Honor, I have follow-up.
HEARING OFFICER HALSTEAD: Go ahead,

Ms.~Zastrow.

FOLLOW-UP EXAMINATION

BY MS. ZASTROW:

Q. Mr. Sheep, on those questions, I had asked you earlier what Mr. McCleve knew and what was in his mind. And if he testified that he understood that he was working under your supervising agreement and, as you just said, he was doing boutique medicine, would you have any reason to disagree with that?

A. No.

Q. Because in Nevada, what matters is what's in the PA's mind, and your communications with him and your interactions with him led him to believe that you were his boutique medicine supervisor. Would you disagree with that?

A. No.

MS. ZASTROW: No more questions.

HEARING OFFICER HALSTEAD: Go ahead, Ms. Bradley.

MS. BRADLEY: I just have one. I'm looking for the supervision agreement.

FOLLOW-UP EXAMINATION

BY MS. BRADLEY:

Q. Dr.~Sheep, let's look at Exhibit 11 now.

This is the blank supervision agreement.

A. Yep. I got it.

Q. Okay. And then that second page that has the regulations?

A. Yes, ma'am.

Q. And there's also information, I think, contained outside of those provisions regarding supervision duties. Is that fair to say?

A. Yes.

Q. At the time that Mr. McCleve provided the Botox on April 8, 2023, at North Vista Hospital, had you been meeting with him part of one day a month to discuss the boutique care that he'd been providing?

A. Sorry. Can you give me the dates again?

Q. So the date of this incident or this -- the injection was April 8, 2023.

A. Okay.

Q. My question was, did you have regular meetings as required by the Nevada Administrative Code -- and it says a minimum of part of one day once a month -- to talk to Mr. McCleve about the boutique medicine services that he was providing?

A. No.

Q. And were you at that time reviewing patient charts -- and it says "selected" in the

regulation; doesn't say how many.

Were you reviewing selected charts of Mr. McCleve's boutique medicine patients at that time?

A. I was not.

Q. So even if you were communicating regarding a possible venture you were going to start, would Mr. McCleve may have had a reason to believe you were his supervisor for services he was providing that month, for example, April 8 April 2023?

A. Would Mr. McCleve have -- I'm sorry. Can you repeat the question?

Q. I just -- I want to say, given the fact -- I'll restate it. I apologize, I withdraw.

So given the fact that you were not having the regular monthly meetings, you were not reviewing selected charts of his boutique medicine patients in April 2023, and I believe you also said you weren't doing it in March 2023, and you didn't do it in May 2023, would it have been reasonable for Mr. McCleve to believe you were supervising the provision of care that he was providing to boutique medicine patients at that time?

A. I -- I guess not.

MS. BRADLEY: I have no further questions. Thank you.

HEARING OFFICER HALSTEAD: Thank you. I just have one more follow-up question.

EXAMINATION BY THE HEARING OFFICER

BY HEARING OFFICER HALSTEAD:

Q. Did you hold yourself out -- when one or both of you were meeting with any of these med spas, did you hold -- did you ever once hold yourself out to any of the people you were speaking with about this business venture as Mr. McCleve's supervising physician?

A. No.

Q. All right. Thank you.

A. Or if I did, I don't recall that I did.

MS. ZASTROW: I'm sorry, what was that?

THE WITNESS: I said, "If I did, I don't recall that I did."

MS. ZASTROW: Your Honor, I have some follow-ups on that.

HEARING OFFICER HALSTEAD: Go ahead.

FOLLOW-UP EXAMINATION

BY MS. ZASTROW:

Q. So you're meeting with these people and you didn't tell them that you were the MD working

with Mr. McCleve, or you just don't remember?

A. I told them I'm an MD. I don't recall saying I am Mr. McCleve's supervising physician.

Q. You don't know that you didn't say that either. Right?

A. I don't know that. That's correct.

Q. If Mr. McCleve is asked the same question, he says that you did, would you have any reason to disagree with him?

A. Yeah. Only because I don't recall saying that.

Q. You don't recall it. Right?

A. That's right.

Q. But a minute ago -- a minute ago, I asked you, based on your interactions with Kayle, could those lead him to believe that you were his supervisor in boutique medicine and you said yes. Recall that?

A. Yeah. I mean, he -- he could have thought that I was still his supervising doctor, and I could have not thought that.

Q. Based on your actions and based on your interactions with other individuals. Correct?

A. That's right.

Q. And the Board counsel wants to look at the

supervising agreement and point out that you didn't follow it. Right? You didn't follow the rules of the supervising agreement, did you?

A. No.

Q. And neither did Mr. McCleve, apparently. Right?

A. That's correct.

Q. And no charges have been brought against either of you for failing to comply with the supervising agreement, to your knowledge. Right?

A. That's correct.

Q. It doesn't mean you're not his supervisor. Right?

A. Does -- sorry. Can you repeat the last question?

Q. Doesn't mean he didn't think you were his supervisor. Correct?

A. That's correct.

Q. And you testified that it would be reasonable for him to believe that. Right?

A. That's right.

Q. In fact, we didn't know you were coming today, and if -- let's say, for example, we had text messages between you and Liliana that would evidence communications between you and her about this

business and about you being involved, would you have any reason to disagree with that?

A. No.

Q. Text messages with Kayle?

HEARING OFFICER HALSTEAD: I think that's a question.

THE WITNESS: Oh. Sorry.

HEARING OFFICER HALSTEAD: But maybe you want to expand on the text messages with Kayle about what? And I called him "Kayle" because you said that, but that is Mr. McCleve.

BY MS. ZASTROW:

Q. Dr.~Sheep, typically when we have notice of witnesses, we're able to pull documents and whatnot. And you're being very truthful and honest on my questions. And then the Board counsel breaks out the agreement and points out you didn't comply with the agreement.

But the real crux of this is that Mr. McCleve understood that the two of you were going into boutique medicine together. Correct?

A. Yeah, I'd say that's correct.

Q. And under -- you said that was correct.

And he understood that you were his supervisor. Correct?

A. Well, I -- I imagine so. I don't know what he thought.

Q. Okay. He didn't call you up and ask for permission to inject Botox at Vista hospital. Right?

A. That's correct.

Q. And he had another supervisor at the actual hospital. Correct?

A. For his ER duties, that's correct.

Q. Okay. Did you know that it was the Board that introduced your name into this proceeding? Did you know that?

A. Did I know -- as opposed to you? I'm sorry. I'm kind of not understanding this question.

Q. And I understand you're coming in blind.

Again, if we had had notice, we could do things such as pull your emails, pull your text messages between 2001 and April of 2023, and they may show ongoing dialogue and discussion about you supervising Kayle with respect to minor procedures like Botox injectables.

Would you have any reason to disagree with that?

A. No.

Q. We don't have those text messages because

we had no notice. But would you just stipulate with me that if we did have your text messages, that's what they would show?

A. They would show what?

Q. That you and Mr. McCleve -- that you were Mr. McCleve's supervisor with respect to this new business venture?

A. I don't know that we ever discussed that after October 1, 2021, specifically. I don't know that we discussed supervising physician.

Q. So if I pull all your text messages and introduce them for the record, they're not going to show that Kayle believed you were his supervisor?

A. I don't know. I'd have to go through my texts.

Q. Okay. Would you have any reason to think that I'm proffering false information?

A. No.

Q. Does it sound like something you may lead him to believe?

A. Does what sound like something?

Q. I'm going to withdraw it. You've said multiple times for the record that it was reasonable for Kayle to believe what he believed.

MS. ZASTROW: I don't have any more

questions.

HEARING OFFICER HALSTEAD: Well, I want to follow up on that, because I believe Ms. Bradley's last question, he testified that he didn't think it was reasonable, and he testified he doesn't -- wouldn't understand what Mr. McCleve thought.

EXAMINATION BY THE HEARING OFFICER

BY HEARING OFFICER HALSTEAD:

Q. So maybe, Dr. Sheep, if you can clarify so it's clear for me.

A. Yeah. I mean, I guess I --

MS. ZASTROW: The opposite. Just said the opposite to me. He said he believed that his interactions with Kayle led Kayle to believe that he was his supervisor and that was reasonable.

THE WITNESS: I think what I'm trying to get across is -- I don't think Kayle was lying. I think -- you know, I was, on paper, his supervisor, a doctor, after October 1, 2021, which I didn't know about. Kayle, I'm sure, knew that. So I'm sure Kayle, like, thought that I was still his supervising doctor. I don't think he was lying about that.

If -- I -- I think that's the gist of what you're trying to get at, but maybe I'm

misunderstanding.

BY HEARING OFFICER HALSTEAD:

Q. The question from both counsel was, was it reasonable in his mind for him to believe that?

A. I mean, I don't -- I don't really know how to answer that. I think it would be reasonable because, on paper, I was his supervising doc.

But at the same time, like, we never formally discussed patients, you know, I didn't review records after October 1, 2021, so, like, I -- it's hard for me to say whether or not that was reasonable.

So I -- like, I don't know if I can answer that question. I can see both sides of the story is what I'm trying to say.

HEARING OFFICER HALSTEAD: Ms. Bradley, I'll give you the last -- this is your witness, so you can have the last question, if any.

MS. BRADLEY: I'm sorry. Could I have a second to look at my notes before we end with Dr.~Sheep?

HEARING OFFICER HALSTEAD: Yes.

MS. BRADLEY: I think I have one question that maybe we'll clarify, maybe not.

FOLLOW-UP EXAMINATION

BY MS. BRADLEY:

Q. I feel like some of the conversation has been about things that you and Mr. McCleve were going to do, and then things that you had done in the past.

So when you were meeting with people and talking about a potential future venture, it sounded like, maybe, you may have represented that you were willing to supervise him on that in the future if that agreement occurred. Is that accurate?

A. That's fair. Yeah.

Q. So you were willing to be a supervisor in the future in this boutique medicine practice, but I haven't heard that that practice between the two of you was ever actually created?

A. It was not.

Q. But prior to October 1, 2021, you had a clear supervision agreement -- or, I'm sorry, clearer supervision relationship with Mr. McCleve. Is that fair?

A. That is fair.

Q. And I believe you've already testified that after the October 21, 2021, date, you did not have the regular meetings regarding patients and you

did not sign off on charts?

A. That's correct.

MS. ZASTROW: Your Honor, it's repetitive at this point.

BY MS. BRADLEY:

Q. Was Mr. McCleve aware that you were no longer having those monthly meetings regarding patients?

A. Was he aware that we weren't having meetings? I mean, I guess he was aware.

Q. And was he aware that you were not reviewing and initializing charts for patients that he had in a cosmetic realm after October 1, 2021?

A. I imagine he was aware.

Q. And what makes you think to say, "I imagine that he was aware."

A. Well, it's hard for me to say exactly what Kayle was aware of. I can't know his thoughts. But we didn't have regular meetings, we didn't do any chart reviews, so I imagine he was aware.

Q. How did you do chart reviews prior to October 1, 2021?

A. We would -- so at My Shape Lipo, I would go in, I would review charts, I would directly supervise him performing liposuction.

Q. Okay. And when you reviewed the charts, were these paper charts?
A. Yes.
Q. Okay. So that wasn't like there was an EMR system you could log in to and do?
A. That's correct.
Q. And after October 1, 2021, you weren't observing the care he provided to boutique patients?
A. That's correct.
Q. And you weren't reviewing charts or meeting with him?
A. That's correct.
Q. But you did continue your friendly relationship with him after that date?
A. That's correct.
Q. And you talked about going into business together in the future?
A. That's correct.
Q. But you never actually did go into business?
A. That's correct.
MS. BRADLEY: I have no further questions for Dr. Sheep.
HEARING OFFICER HALSTEAD: Any further rebuttal witnesses, Ms. Bradley?

MS. BRADLEY: No, I do not have any further rebuttal witnesses.

HEARING OFFICER HALSTEAD: Are you excusing Dr.~Sheep?

MS. BRADLEY: I would excuse Dr.~Sheep.

Thank you, Dr.~Sheep, for taking your time today.

THE WITNESS: You're welcome. Thank you.

MS. ZASTROW: Thank you, Doctor.

MS. BRADLEY: Thank you, Dr. Sheep.

HEARING OFFICER HALSTEAD: Okay. So it's 4:43. Both -- well, Ms.~Zastrow didn't put on a case, other than with regard to Mr. McCleve, which was done at the same time as the Board's questioning of him, and then we finished with rebuttal.

So the matter -- my understanding is that this matter is closed, unless you're --

MS. ZASTROW: Your Honor, I would like to call Mr. McCleve as a rebuttal witness.

HEARING OFFICER HALSTEAD: Ms.~Bradley?

MS. BRADLEY: I don't have any more witnesses to call. If she'd like to call Mr. McCleve, I suppose that's fine. She did have a lot of time to question him before --

MS. ZASTROW: Before I heard your witness.

MS. BRADLEY: I would appreciate that you not --

HEARING OFFICER HALSTEAD: I was just asking with regard to procedure, because I don't know that there's, procedurally, rebuttals for rebuttal. So that was my question.

But Ms.~Bradley doesn't appear to be objecting.

MS. BRADLEY: I would just ask that if she calls Mr. McCleve, that the testimony is limited, because we spent a lot of time on him today, and that's what I was starting to say before she interrupted me. We spent a lot of time with him. She had a lot of time to ask him direct questions and even cross-examining questions.

And so, I think she can call him. I don't object to that, but I just want to, hopefully, limit that.

HEARING OFFICER HALSTEAD: Ms.~Zastrow, how much -- I'm just trying to contemplate because it's 4:45. We also reserved Monday for this case if we need it. You can obviously start today, but I don't know that you'll finish today. So I guess I'm asking you, timing-wise --

MS. ZASTROW: Your Honor, I just have a

couple of -- yeah, within the scope of Dr. Sheep's testimony, I just have a couple of questions for Mr. McCleve.

HEARING OFFICER HALSTEAD: Okay. So with that, then -- and Ms. Court Reporter, are you fine proceeding because you haven't had a break in a little bit?

THE REPORTER: I'm fine. I'm okay.

HEARING OFFICER HALSTEAD: Okay. All right.

Go ahead, Ms.~Zastrow.

MS. ZASTROW: Thank you. Does he need to be sworn back in?

HEARING OFFICER HALSTEAD: I can swear back in again, but he's already sworn in so he remains under oath.

But, Mr. McCleve, raise your right hand.

MS. ZASTROW: I thought he had been released. Sorry.

(The oath was administered.)

HEARING OFFICER HALSTEAD: Thank you.

DIRECT EXAMINATION IN REBUTTAL

BY MS. ZASTROW:

Q. Kayle, you just heard the testimony of Dr.~Sheep?

A. I did.
Q. Did he say anything you disagreed with?
A. Yes.
Q. What?
A. The timeline as to the business venture and what my understanding -- what his understanding of acting as supervising doc moving forward with the cosmetic boutique-type practice that we were forming.
Q. Did you ever meet with him at your home and he reminded you that he was your supervising doc?
A. Andy came by my house several times. I went to his house in the spring, probably March, April of 2023. We met in the backyard and had a very lengthy conversation. [redacted].
He expressed that he did not want to be a supervising doc in liposuction, but he would go ahead and do the Botox and we could move forward with the boutique thing. That was in the spring of 2023.
Q. Now, did he say to you that he was aware

that he had an existing supervising agreement with you?

A. He did. He said, This will work out great, because I'm -- technically, I'm still your supervising doc. And that's paraphrased, but that's pretty close to what he said.

Now, whether he remembers that or not, I don't know. I mean, again, that was, you know, the spring of 2023, maybe he forgot that detail.

But when it comes to me, my thing, understanding that I need a supervising doc to operate and provide services, that is a very important step in a venture that I want to do medically moving forward. So that is a detail that I would definitely remember.

Q. Okay. You heard Ms. Contine ask him about meetings, about patients. You didn't have any patients, right, in March or February of 2023, you had no patients, did you?

A. So the unfortunate part about this particular patient that is part of this case is that was the first patient. We were -- I was -- like I explained earlier, I was trying to establish goodwill with certain med spa owners. That one happened to be with Rachel at Oasis med spa.

And you heard Andy testify that, yeah, Rachel's name, that sounds familiar. Well, that's because we were planning on moving forward with boutique medicine at Rachel's place. Also Lillian's place.

Q. So a lot of questioning about whether or not you were meeting with patients, you didn't have any patients. Whether or not you were having monthly meetings about protocols, you didn't have any patients to talk about. You had a business venture to talk about. Correct?

A. Right. We had an idea --

Q. We're trying to be quick here, and we're not being redundant.

Did you meet with him frequently?

A. Yes.

Q. Did you talk to him frequently?

A. Yes.

Q. Did you text with him frequently?

A. Yes.

Q. If we downloaded all your text messages, would they support your testimony that you understood him to be your supervising doc?

A. I have text messages, group messages between myself, Andy, and a med spa owner discussing

what time are we going to meet to discuss this venture?

Please, subpoena my phone. I would love to show Ms.~Bradley this evidence.

MS. ZASTROW: I'm just looking at my notes, Your Honor.

BY MS. ZASTROW:

Q. When you spoke to him the day after this happened with Patient A, he was aware that he was your supervisor. Correct?

A. Correct.

Q. Do you -- was he misspeaking -- what was going on -- is he a -- is he worried that the Board is going to come after him, you think?

A. We've had numerous lengthy conversations about the lengths in which the Board will go and the dirty tactics that they employ in going after people to get what they want.

My anticipation, and I haven't talked to him, I will call him once we get off of this and I will get all of the scoop, [redacted]

[redacted]

Q. And you heard him say that it was reasonable for you to believe that he was your supervisor. Right?

A. I did.

Q. He actually changed his testimony a couple times.

A. I heard.

Q. Did you hear that too?

A. Yes. And I appreciate the hearing master clarifying and trying to get clarification, although I didn't think it was fully solidified.

MS. ZASTROW: I don't have any more questions, Your Honor.

HEARING OFFICER HALSTEAD: Ms.~Bradley?

CROSS-EXAMINATION

BY MS. BRADLEY:

Q. Patient A was the only patient that you had after October 1, 2021, wherein you believed Dr.~Sheep was your supervisor. Is that correct?

A. Correct.

Q. Did you ask Dr.~Sheep to review the

records that you maintained on your phone for Patient A?

A. He didn't need to. We had a very lengthy discussion. It was a verbal review. I told him exactly what had happened.

Q. But you had one patient, and Dr.~Sheep didn't review and initial the selected chart for that patient?

A. He did review the entire case. We did it in a verbal manner.

Q. You didn't show him the records that you made?

A. Would you like me --

Q. Yes or no, did you show him the records that you made?

A. No, I did not show him the pictures. And I did not show him the amount of Botox and where I injected it, no.

MS. BRADLEY: I don't have any further questions.

HEARING OFFICER HALSTEAD: Ms.~Zastrow?

MS. ZASTROW: No more questions, Your Honor. And I don't have any other witnesses either.

HEARING OFFICER HALSTEAD: Okay. So we move to closings.

MS. BRADLEY: I'm not sure we'll be able to get closings done before 5:00 p.m. today.

MS. ZASTROW: Are we required to or can we go later?

MS. BRADLEY: My assistant can't work past 5:00, and she's the one that's running the meeting room. I'm sorry that makes you shake your head, Ms.~Zastrow. It's not my intent to make you do such things.

HEARING OFFICER HALSTEAD: Let's look at a calendar. Are you both still available on Monday for closings?

MS. BRADLEY: Yes.

MS. ZASTROW: Yes. I'm also available tomorrow, because my doctor's appointment that prohibited tomorrow is now gone, if we wanted to do it tomorrow instead of Monday.

HEARING OFFICER HALSTEAD: So I can't do tomorrow, but I can do Monday. And I have the -- Ms. Zastrow, I appreciate you offering that.

I prefer to do it Monday in the afternoon. What time works for you guys for an afternoon? Do you want to do 2:00?

MS. BRADLEY: That should be fine for me. I do have a commitment for the Board at 5:00 p.m.,

but I don't expect that a 2:00 p.m. start will put us anywhere near that. So I'm fine with the 2:00 p.m.

HEARING OFFICER HALSTEAD: I don't want to have three hours of closing statement.

MS. BRADLEY: No. I know. And I don't anticipate that. That's my only plan on Monday, is that 5:00 meeting.

HEARING OFFICER HALSTEAD: Ms.~Zastrow?

MS. ZASTROW: Yep, that works for me.

HEARING OFFICER HALSTEAD: Okay. So here's what I would like for -- you guys have time now before we do closings on Monday.

What I would appreciate is if you both do your closing centered around the Complaint allegations and why or why not they cannot be substantiated based on the testimony that's been presented.

Ms.~Zastrow, correct me if I'm wrong, are you conceding Count II, which is the records count?

MS. ZASTROW: We always have, Your Honor. And I'll be discussing that with respect to discipline.

So when you said limited to the counts, I just want to make it clear that I plan on doing a

presentation about any particular discipline that may or may not be recommended.

HEARING OFFICER HALSTEAD: Any other questions for me about what I'm expecting on Monday at 2:00?

MS. BRADLEY: Not for me. Thank you, Ms. Halstead.

HEARING OFFICER HALSTEAD: Ms.~Zastrow, anything further from you?

MS. ZASTROW: No. And I hope I was clear. With Count II, we concede a violation of the statute, but I will be arguing about the nature and extent of any proposed disciple.

HEARING OFFICER HALSTEAD: You raised that already.

MS. ZASTROW: I think that was -- yeah, I'm sorry. It's later for me here at 7:00. Thank you.

HEARING OFFICER HALSTEAD: Okay. I appreciate it. Then -- and so we'll be back -- and we're going to do this by Zoom as well. Correct?

MS. BRADLEY: Yes. That was my plan.

HEARING OFFICER HALSTEAD: Okay. Ms.~Bradley, I expect your office to send out a link.

And, Mr. McCleve, no one specifically checked with you. You're available Monday at 2:00?

MR. MCCLEVE: I -- sure I can make it happen. That's okay. It's work that have to miss.

HEARING OFFICER HALSTEAD: All right. Is there a time that would be better for you that would make it easier for you if you have to work that day?

MR. MCCLEVE: Well, tomorrow would be great, but -- no. No, it's -- in the morning time works better for me. And I know it works better for Lisa because she's two hours ahead of us.

HEARING OFFICER HALSTEAD: Okay. So if you prefer in the morning, do you want first thing in the morning? What are you anticipating? I'll accommodate your work schedule as best I can if that's a work day for you.

MR. MCCLEVE: Great. First thing in the morning is awesome so that I can get at least a half a day worth of work.

HEARING OFFICER HALSTEAD: Okay. So are we going to do 8:30 again, then? Ms.~Zastrow, does that work for you?

MS. ZASTROW: As Kayle said, that always works better for me because I'm two hours ahead of you. So, yeah, that's great for me, but I'll

accommodate whoever.

HEARING OFFICER HALSTEAD: Okay. Ms.~Bradley?

MS. BRADLEY: Yeah, 8:30 in the morning on Monday works for me. Thank you.

HEARING OFFICER HALSTEAD: Okay. All right. Thank you, Mr. McCleve for chiming in on that.

I'll see everyone Monday at 8:30 for closing arguments.

MS. ZASTROW: Thank you, Your Honor.

MS. BRADLEY: Thank you everyone.

(Proceedings recessed at 4:58 p.m.)

STATE OF NEVADA)
) ss.
COUNTY OF WASHOE)

I, BRANDI ANN VIANNEY SMITH, do hereby certify:

That I was present on September 18, 2025, for the hearing via Zoom and took verbatim notes of the proceedings entitled herein, and thereafter transcribed the same into typewriting as herein appears.

That the foregoing transcript is a full, true, and correct transcription of my notes of said proceedings consisting of 328 pages, inclusive.

DATED: At Reno, Nevada, this 30th day of September, 2025.



BRANDI ANN VIANNEY SMITH

BEFORE THE BOARD OF MEDICAL EXAMINERS

OF THE STATE OF NEVADA

FILED

SEP 30 2025

NEVADA STATE BOARD OF MEDICAL EXAMINERS

In the Matter of Charges and Complaint Against:

Case No. 24-42281-1

DAVID KAYLE MCCLEVE, PA-C,

Respondent.

_____/

TRANSCRIPT OF HEARING PROCEEDINGS

DAY 3

Held remotely, via Zoom

Monday, September 22, 2025

Reported by: Brandi Ann Vianney Smith

Job Number: 7621792

A P P E A R A N C E S:

THE HEARING OFFICER:	PATRICIA HALSTEAD, ESQ.
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ALSO PRESENT:
Mercedes Fuentes, Legal Assistant

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I N D E X

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EXHIBITS

(none marked)

RENO, NEVADA -- MONDAY, SEPT. 22, 2025 -- 8:35 A.M.

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HEARING OFFICER HALSTEAD: We are back on the record In the Matter of Charges and Complaint Against David Kayle McCleve, PA-C, case number 24-42281-1.

This matter is continued from last week for the purposes of providing closing statements. I had asked the parties to give closing statements and to focus on the Complaint and the allegations and the proof or contrary arguments thereto with regard to the charges as stated.

It is now 8:35. Can counsel please state their appearance for the record, Ms. Bradley?

MS. BRADLEY: Sarah Bradley, Deputy Executive Director, on behalf of the Investigative Committee.

HEARING OFFICER HALSTEAD: Thank you.

Ms. Zastrow?

MS. ZASTROW: Good morning, Your Honor. Lisa Zastrow for Respondent, Mr. McCleve, and I would ask that he mute.

Kayle, you're not on mute.

HEARING OFFICER HALSTEAD: And I note for the record that Mr. McCleve is also present.

Is there anything we need to discuss prior to moving to closing arguments?

Okay. Hearing nothing, Ms.~Bradley?

MS. BRADLEY: Thank you.

CLOSING STATEMENT

BY MS. BRADLEY:

All right. So the motive of the Board in this matter is as stated in NRS 630.003. Specifically, the Board was created for the protection and benefit of the public. The Board has statutory duties to investigate complaints received and proceed forward to to hearings and potential disciplinary action, if directed by the Investigative Committee, which is also a statutory body created in a statute.

And so, I mean, that's the motive of this case. I know there's been a lot of other conversation, but that's why we're here: The Investigative Committee believes that this is necessary to protect the public.

The Board has the burden of proof by the preponderance of the evidence to prove that all of the factual allegations and alleged violations of

law are true. We believe we have met our burden. And I'm going to go ahead and go through each of the factual allegations contained in the Complaint with regard to that.

So the first one is factual allegation number 1, this was actually admitted in Mr. McCleve's answer that was filed on January 29, 2025. So I don't think that one is that issue.

Factual allegation number 2, this is the age of Patient A and his gender, and that is supported by Exhibit 8.

Factual allegation number 3, so this allegation says that on April 8, 2023, during his shift as an emergency department physician assistant, Respondent injected Patient A with botulinum toxin at a location within the emergency department at North Vista Hospital.

This is something that Mr. McCleve admitted in Exhibit 2. He does say that. He also admitted it in the testimony in this case.

He testified that he worked the mid shift that day, which was 11:30 a.m. to 11:30 p.m., and that Patient A came to the hospital while he was on his shift. And that's when he did inject him with the botulinum toxin at the hospital location.

He does say, in Exhibit 2, he talks about preparing a location within the hospital for that. So we do know -- I believe he also testified that it was within the hospital, it wasn't outside of the hospital, like in the parking lot or something. Not that that was alleged, but yes, it's clear, I think, by testimony that it was in the hospital. He was on shift that day, April 8, 2023.

Factual allegation number 4, all of the testimony and Exhibit 8 support this allegation. Patient A was not registered at North Vista at the time, and Respondent treated Patient A and performed the injection without knowledge or permission of his employer, which was the Superior Emergency Physicians, North Vista Hospital, or emergency department staff.

I believe his testimony was clear on that and that he, you know, was on shift. He did do this. I believe -- you know, he even said that it was maybe a stupid thing to do. I think he maybe even said, you know, may not have been -- like, it wasn't a good choice. And so he admits, I think, to the substance in his testimony of factual allegation 4.

Exhibit 8, I think also supports this in

that when Patient A was found and brought in, it was reported to them that this treatment occurred, but it wasn't something the hospital was aware of.

Factual allegation number 5. So this says that Respondent did not have a supervising physician overseeing and ensuring his competence to perform cosmetic procedures at the time he injected Patient A with botulinum toxin.

The testimony and records of the Board do show that Dr.~Sheep was on file as Mr.~McCleve's supervising physician on April 8, 2023. However, just having an agreement on file does not authorize a physician assistant to perform services outside of that agreement. So the agreement on file, Exhibit 12, does not pertain to cosmetic services that Mr. McCleve provided at North Vista Hospital.

First of all, the address on the form is not North Vista Hospital's address. There was testimony that that initial agreement was for a medi spa; it was not a medi spa where either of them were currently working. There was also testimony that talks about other medi spas, perhaps, being involved while Dr.~Sheep was supervising Mr. McCleve's provision of cosmetic services.

But the testimony is clear that there was

not an agreement in place -- and this is also in Exhibit 2 -- with regard to the medi spa alleged in this case.

Both Dr.~Sheep and Mr. McCleve were very clear that they were going to make this -- they were looking at this, they were meeting, there was this ongoing, potential process to start something new with a new medi spa, but that had not been done yet.

And so I don't believe it's reasonable -- I think that's part of the reason we're here today -- that this agreement would have pertained to these services.

And, in fact, when the Board initially reviewed Exhibit 2, we just looked at the "Prior to solidifying a formal written agreement with any med spa owner or Dr.~Sheep," and we believe that that meant that Dr.~Sheep wasn't providing the supervision here and it wasn't in place. And so that's how we took it.

I know there's been testimony that this was the business thing that wasn't in place -- and we will concede, I mean, our records show it -- that he was on file, but again, being on file doesn't mean they're working together. Should it have been terminated sooner by Dr.~Sheep, if that was

intention? Yes. But -- anyway, both Dr.~Sheep and Mr. McCleve testified they're working on starting this boutique medicine business. They had not done that yet. They didn't have an agreement yet with a medi spa.

Dr.~Sheep testified that he did not know that Mr. McCleve was doing these injections for Patient A at Vista Hospital until afterward. I think it's hard to say that he was supervising him for something that he didn't know was occurring.

He testified that they had been in communication. I think both parties were consistent with that. They've been talking. They've been talking about maybe starting something and continuing to work together. But they were not talking about supervision-type things, which in the regulations specifically are talking about patient care, specific care that's been provided to patients, or initially charts after October 1, 2021.

So they weren't having those meetings. They may have gone to each other's houses and talked about their plans, but there was not the more-specific requirements occurring.

I know that they were both clear that Mr. McCleve told Dr.~Sheep about this incident after

it happened, but Dr.~Sheep said he never reviewed records for this, he didn't know he was a supervisor of record. He thought that he was told this because they were friends and this was an incident that occurred, and -- you know, I mean, it makes sense that you might talk to someone about that.

Dr.~Sheep testified that he didn't think it was reasonable, or he wouldn't -- he wouldn't have thought it was -- I believe he said he didn't think it was reasonable to do this at the hospital, to bring someone in for cosmetic procedure when they're not registered, et cetera.

So if he thinks this wasn't reasonable, it's, again, hard for it to be something that he authorized, that he supervised, that he delegated to Mr. McCleve to do.

And that's the standard. Even if you have an agreement on file, it's not without limits. There has to be things that are authorized, delegated to you to do. The supervisor needs to be aware of the services you're providing.

Now, that doesn't mean every single little thing. It doesn't mean that you have to talk to them before you touch a patient. But it does mean, for example, in the ER -- and I think Mr. McCleve

talked about this a lot, he's in the emergency room, he treats patients as they come in. He doesn't have to check with his supervising physician every single time he treats a patient, because he's authorized to be there in the emergency room, authorized to provide services. They believe he's competent to provide those services. And so he's not asking before he does treatment at a location he's authorized to be, providing treatment he's authorized to provide.

And, you know, when asked, Dr.~Sheep said, yeah, he didn't review medical charts or records. They didn't actually have the monthly conversations regarding patient care.

But then later, Mr. McCleve said that this was the only patient that had been treated for this new business, but the testimony is clear and the evidence is clear that that new business never started.

To me, this fits maybe best with they wanted to make a venture and they hadn't done it yet and maybe Mr. McCleve jumped the gun a little and treated someone early in that agreement that had not happened for that new business with that new medi spa, because they're both clear that they hadn't

actually started it yet.

And I think Mr. McCleve's explanation for why Dr.~Sheep wasn't reviewing medical charts and records for this boutique business after October 1, 2021, was that they hadn't done it yet, this was the first one.

So based on that, you know, we believe the preponderance of the evidence supports that Dr.~Sheep could not have been supervising Mr. McCleve for this service on April 8, 2023.

The evidence is clear, I think -- and I don't think anyone disputed -- that Dr. Harris was supervising Mr. McCleve for emergency services that were provided at North Vista Hospital on April 8, 2023. The service at issue was not an emergency room service, and I don't think anyone disputed that either. This was a separate cosmetic service. And so the agreement with Dr.~Harris that's on file does not pertain to the care at this case, and so that could not have been supervising Mr.~McCleve.

And based on the testimony from Dr.~Sheep and Mr. McCleve and the evidence that we have in the record, Dr.~Sheep also could not have been supervising the service that was provided on April 8, 2023.

Nevada law, again, requires that services be delegated and authorized, and we just don't have that in this case. It's not a blanket authorization; it's specific to the conversations that the two of them have and the services that are authorized.

I think it's easier, perhaps, when you're in a location like a hospital, you know, and you're treating people that walk in the emergency room door, it's easy to know you're authorized to do this, please do this. Things like this, maybe it's harder to know, but I think the testimony still shows that that was not in place.

Allegation number 6, Respondent did not create any medical documentation of his care or treatment of Patient A prior to injecting him with the botulinum toxin. I mean, we still stand by the fact that there were no records created.

There is a response for Mr. McCleve in Exhibit 2, and he talks about maybe some of the things that he says that he did when he saw Patient A, but that that wasn't available in the traditional sense, as Ms.~Elmquist was talking about for medical records. People couldn't review that and know what was done with regard to continuity of care.

Further, that was created much later, and it's in the Board's file, not a medical record file that a healthcare provider could access.

Mr. McCleve did testify in the hearing that he had some records on his phone. I think he said he had notes without a patient name, and he had some photos. Those weren't provided to the Board, and there was no testimony that those were provided to anyone else or reviewed by anyone else. Dr.~Sheep said he didn't see them, and he didn't review them.

And again, part of the requirement for records is that they're available for review, they also have to be timely, legible, accurate, and complete. But basically here, our belief is that a medical record, as required by Nevada law or as defined by Nevada law just was not created for the care provided to Patient A.

Mr. McCleve does admit to the records violation statute, which is that NRS 630.3062, sub 1, sub A. He doesn't go so far as to say that number 6 is true. But, you know, we believe that the testimony from him, Ms.~Elmquist's testimony, Exhibit 8 show that it is true, that there was not medical record created for Patient A.

Exhibit 8 refers to information being reported to the treating physician, which was Dr.~Clark, but there's no reference by Dr.~Clark or anyone in Exhibit 8 that they reviewed records regarding this -- these injections.

Exhibit 7, we believe that this is substantiated by Exhibit 8. And, really, the only reason this allegation is in there is this is how the hospital learned of this issue and then subsequently the Board, because the patient did present in that way to the emergency room on that day.

With regard to malpractice, that's Count I in the Complaint, NRS 630.301, sub 4. And there's a definition in NAC 630.040 regarding malpractice. And obviously part of malpractice-- so, first of all, malpractice in an administrative proceeding and the Board's proceeding is not the same in a civil proceeding. We don't have to show, actually, causation or damages.

So, really, the issue is, was there a duty and then was there a breach? Was this the standard that should have been provided? Was there a duty to provide that standard, and was it provided?

And so in this case there's three

elements, really. So reasonable care, reasonable skill, and reasonable knowledge that's ordinarily used under similar circumstances by, essentially, the same type of provider.

And so our belief is -- you know, because we were not judging the injections, we didn't have records to review with regard to the injections and the proper locations, et cetera. If we'd had those, we may have had a different provider do that review for us.

I think the concern here is that, reasonable care includes a proper location, an approved location for the services that are being provided.

The emergency room -- a place in a hospital emergency room while you're on shift for that hospital providing emergency room services and that patient's not documented, that's just not reasonable care. And I think we heard that from Ms.~Elmquist. I think we heard that from Dr.~Sheep.

And again, I think Mr. McCleve conceded that in some ways in that he said this was a stupid choice, you know, I think he admitted that this wasn't a good thing to do. I believe Mr. McCleve's argument has been this was a violation of hospital

policy and not malpractice.

And we do agree that not every violation of hospital policy constitutes malpractice, of course, but there definitely are some violations of hospital policy that also constitute malpractice.

And in this case, we just believe that this conduct was just very outside the standard, very not done, very much -- really, a concern regarding judgment. It's not reasonable care because there's this -- judgment was lacking in this case.

And I think Mr. McCleve even admits that. He says, you know, I didn't really want to do it, but she was pressuring me. I wanted to have this client. So he was really pushed and really kind of maybe coerced in some ways or pressured into providing it. And I'm sure that happens to providers all the time when people want them to provide -- to prescribe things inappropriately, whatever it might be. You know, you go to a cocktail party and they ask you to do something that probably you shouldn't do.

And so for us, it's just not reasonable care because it was just such bad judgment, in a bad location, not approved, and, potentially, quite

scary.

And so we believe, yeah, that's not something a reasonable physician assistant would do. I don't believe it's something a reasonable physician would do. And I think Dr. Sheep even said that he was aware of another physician who did something bad, maybe similar-ish, and there were a lot of repercussions for that.

And so -- and then we outlined in number 11 there under Count I, the failure to use reasonable care skill or knowledge is -- basically we kind of support these three ways. So first of all, it's rendering these services, these botulinum toxin injections, during the emergency department shift at North Vista hospital.

There was not a record created. He says he did do a medical history or exam, but we don't have medical documentation of that. And I think it's fair and important to realize too, the record statute talks about timely, legible, accurate, and complete. It doesn't talk about when they're not created, when they don't exist, when they're not available for people to review. And so we would argue that this kind of goes above a traditional records violation.

I've been at the Board almost six years, and I've seen a lot of records violations. But I've not seen a violation like this where the record wasn't created, there's a response provided to the Board, there might be notes on a phone, but there's not a traditional record created at all.

Usually what we're looking at is, you know, something was missed, something's not clear, maybe using templated material, something that, you know, we don't like.

But this is -- so we actually included the records part here under malpractice because we believe it raises to that level where not only was the location bad and the judgment bad and this was not done in a proper way with regard to that, but also the lack of medical records regarding it also kind of pushes it into that level of malpractice.

Count II is the failure to maintain complete medical records. And I believe that Mr. McCleve, in his testimony, did concede to that, and I think his counsel also said that as well. And so we would just submit that that's been proven based on their statements during the hearing.

Count III, this has to do -- so the title, it's NRS 630.306, sub 1, sub B, sub 2. It says

"Violation of standards of practice established by regulation."

This is alleged with regard to NAC 630.340, sub 2, and that's really what we are alleging, is that we don't have a valid supervision agreement for the services provided in this case. The testimony is, again, that the parties were still working on, perhaps, a new venture to do that. We don't have that in this case.

Mr. McCleve had more than one supervision agreement on file, so he was aware that he could have, you know, more than one. And so he had Dr.~Harris for the emergency room, he had Dr.~Sheep, for, for maybe some cosmetic services.

Again, the location on the form is not the location where the services were provided, and even if he did provide services at other locations that were other medi spas, I think it's fair to say, from Dr.~Sheep's perspective, he was supervising things, that medi spa, not things that at the hospital in a room.

And again, they were very clear that they had not actually entered into that new business plan yet. And so if there's not a new business plan for the supervision, you know, it just doesn't -- that

supervision agreement that's on file isn't the supervision agreement that governs the practice that occurred here today. And so that's why we've alleged that.

I would note that there's not a knowing standard. So this provision, 306(1)(b)(2), doesn't say "knows or should have known," so this is really just a factual question. Was there an agreement on file that covered the services that were provided in this case? And I believe the evidence and the testimony shows that there wasn't. There was an agreement on file, but it was not for this, the service at this location with this, I guess, medi spa client because there was not actually an agreement yet with that medi spa to provide services.

Count IV is practicing beyond the scope of the license. Now, this is NRS 630.306, sub 1, sub E. This one does have a knows or reason to know standard. So this is practicing or offering to practice beyond the scope permitted by law or performing services which the licensee knows or has reason to know that he or she is not competent to perform, or which are beyond the scope of his or her training.

And so, you know, again, in this case, what we're talking about is the scope of practice for a physician assistant that their supervisor authorizes them to perform. They can perform delegated tasks or delegated care.

They also, though, have to be competent themselves and there's some ability. So it's not just a blanket, you can do whatever you want. You have to do the things your supervisor says, you have to feel competent in doing them, and they have to be a part of the scope of practice for your supervising physician. So it has to be something that the supervisor also is competent in and can supervise you in. I think that that makes sense as a logical step.

The concern here is that these services were not authorized by Dr.~Sheep, they weren't provided in a manner that he authorized, at a location that he authorized, and that also goes to NRS 630.271 that talks about authorized services for a physician assistant.

It's really a precursor to work. So we give licenses to physician assistants, but if they don't have a supervising physician in place, they can't work. And we even note that on their file.

And so the supervision piece and having someone that has, you know, signed on to take responsibility for the treatment that you're going to provide at the location, you're going to provide in the types of treatment, and then they also, again, delegate it to you -- I mean, it's my understanding Mr. McCleve has performed these services in the past, and so maybe there's not concerns like his competence or how he might perform them. Maybe supervisors have authorized this service.

But just because it was authorized in another location in the past, that's not the same as what happened here, because it's a different location, a different patient, a different medi spa that there was nothing on file with. It's just -- it doesn't carry over, it's not a blanket authorization.

And, you know, the reason for that supervision and that authorization is to protect the public, that's something the legislature has told us we need to do, and so we need to make sure that's being done whenever physician assistants are providing services.

And so based on that, we do believe that

we've proven the allegations as contained in the Complaint.

I did want to note, with regarding HIPAA, because there was some concern that Dr.~Sheep shouldn't have known -- he did not receive the medical records, and I think that was clear. But he did know the name of the patient, and he knew the name of the patient when the Board opened the investigation.

There is an exception in HIPAA for investigations done by oversight agencies. Because he was on record at the time, that's why he was asked about this case and given that patient's name. And that doesn't violate HIPAA, it's normal standard for investigations of this nature, and it's authorized by federal law.

You know, there was comments about Ms.~Elmquist, perhaps, ignoring -- as she said she read everything, she did not consider Exhibit 2 to be a medical record, and I think that's fair. I mean, she practices, you know, in medicine and in an emergency room, she reviews records. She does this all the time.

So she read it, but she didn't consider it to be a medical record that meets the standard under

Nevada law for that. And so she didn't give it the same weight as she might have something else.

I also want to note that I don't think -- there's been some reference to settlement discussions, those aren't -- I believe that, Ms.~Halstead, you're already aware of that, but I just want to put on the record, it's not appropriate to have bearing in this case, what was maybe discussed between the parties and settlement, and so we would just ask that not be relied on when making the decision in this case.

The other thing we'd like to say is, I don't believe there's anything in the record that says we wanted to combine the cases. We were clear, always, that we wanted to have them heard consecutively. Our plan was that this case be heard after the other case. And so I just want to make that clear. There's a difference between combining cases and hearing them consecutively.

Again, there may have been discussions differently with regard to a settlement that's not admissible and not public and never was brought to the Board, but I just want to make sure it's clear that that was not something the Board intended, because you could move to have two cases heard

together. We didn't do that. We wanted to do one and then the next one. And that was always our plan.

There's been references to this taking multiple years. The record shows that the incident happened on April 8, 2023. I believe the Board was aware of it in, perhaps, May and June. The Investigative Committee gave authority to file the formal Complaint on November 14, 2024, and the formal Complaint was filed on November 22, 2024.

It takes time sometimes to gather documents. It takes time sometimes to have an Investigative Committee review a case. They meet quarterly, as is shown on the Board website. But there is no intentional delay or anything of that nature.

This did not take multiple years. In fact, it took approximately a year and a half from the incident, a year and seven months, I think, from the incident to the filing of the formal Complaint.

And I believe that's all I have. We would ask that you find that the factual allegations, as contained in the Complaint as well as the alleged violations of law, have been proven, and enter recommended findings to that in your

recommendations.

Thank you.

HEARING OFFICER HALSTEAD: Thank you, Ms.~Bradley.

Ms.~Zastrow?

MS. ZASTROW: Thank you, Your Honor.

I would note that Ms.~Contine did not request any specific disciplinary finding from you. I don't know if that was intentional. But pursuant to rules, you're required to issue summaries of testimony and provide recommendations and findings to the Board, which would include recommendation for discipline.

Whether the Board accepts it or not, that's up to them. Ms.~Bradley did not recommend any specific discipline. I don't know what -- if that's her intent for no discipline, so we would concede.

HEARING OFFICER HALSTEAD: I'll just tell you, Ms. Zastrow, my experience, they usually leave that to my discretion. It's not usually suggested to me one way or the other, but you're certainly welcome to do so.

MS. ZASTROW: Okay. All right. Thank you.

CLOSING STATEMENT

BY MS. ZASTROW:

Your Honor, nearly everything she said was argument, and a lot of that argument was not supported in their own statutes or Nevada law. And I want to talk about that in detail, especially with respect to the malpractice, respect to the supervising agreements, respect to recordkeeping, they don't even cite what their own witnesses say and do not say.

We were here for two full days, and Ms.~Bradley simply went through the Complaint and said, this is why we should win, but she didn't point to who said what to support the preponderance of the evidence standard. And that's what's required here.

It's our position that this was a hasty filing, following another matter last year, in which the Board was not successful.

Ms.~Bradley started her presentation with comments about motive, and she said the motive is within its statutory duties, they want to protect the public. That's what she said her motive was.

And I would just say for the record, each time I try to present evidence or discuss motive,

Your Honor made it very clear that that wasn't something that you were necessarily going to consider.

But I did -- I did say that I think it's a huge factor in this case, especially when it comes to how the Board conducts itself, how the Board manipulates and uses statutes as a shield and a sword, how they selectively choose to prosecute.

For example in this case, Mr. McCleve alone, they had Dr. Sheep listed as a witness -- or, I'm sorry, his evidence in the file, never called him a witness. And then when they called him, they told him he didn't need a lawyer. And what did he testify to on the record? That he's in violation of the law.

Not only that, the Board is required by statute, not go over it, is required by statute to give Mr. McCleve's supervising physicians notice of this hearing. They didn't do that. The point is, they don't follow their own rules, Your Honor.

A good example of that is all throughout the Complaint, they talk about NRS 630. The administrative procedures in this case for physician's assistants is specifically set up by the Board. NRS 637 -- or 275 says that the Board must

adopt regulations specific to physician's assistants. And if you look at this Complaint, it reads as if it's a complaint against an MD. And we're going to go over that.

Now, a couple of the rules, for example, with malpractice, are incorporated. I'll give them that. But with each cause of action, if you look at, for example, allegation number 16:

"Respondent is subject to discipline by the Board as provided in NRS 630.352."

Your Honor, that regulation doesn't apply to physician's assistants at all. The only discipline that's allowed against a physician's assistant is what's promulgated in the NAC. None of it was cited in their Complaint. And it's just an example, Your Honor, as to what's going on here: They're trying to apply an MD standard to Mr. McCleve. They're using statutes that they think help them. They're ignoring other statutes that are required.

Your Honor, as another example, in NAC 630.390, that talks about discipline specific to physician's assistants, not MDs. Part of that regulation says that notice has to be given to the PA and the supervising physician at least 20 days

before this hearing, as mandated. That's their own law. That's their requirement. They didn't do it. They didn't notify Dr.~Harris, they didn't notify Dr.~Sheep. And their own Complaint references statutes that don't apply to this physician's assistant, Mr. McCleve. And that's who he is.

Your Honor, I don't know if you have access in front of you to the statutes, but just as -- just as an example, if you were to pull up NRS 630, the entire code, Your Honor, it talks about, physician's assistants like PA McCleve. It talks about anesthesiology assistants. It talks about practitioners with respiratory care. There are a whole list under NRS 630 of disciplines outside of MDs.

And with respect to PAs, the Board mandated that discipline be outlined in a different section; not within the provisions that are cited in this Complaint. The provisions for discipline, Your Honor, are as I said before.

And it just shows what's going on here. This was a quick-to-charge Mr. McCleve, and the Complaint itself is disproven by the facts, which I'm going to get into now, and they also rely on laws that are irrelevant and don't apply to

Mr. McCleve.

First I want to talk about what Ms.~Contine went through when she was talking about the motivations of the Board.

HEARING OFFICER HALSTEAD: Ms. Zastrow, I'm sorry to interrupt. I just want the record to be clear, it's Ms.~Bradley.

MS. ZASTROW: What did I say?

HEARING OFFICER HALSTEAD: "Ms. Contine." You said Ms. Contine three times and corrected yourself once. So I just want to make it clear for the record that it's Ms. Bradley.

MS. ZASTROW: Sorry. Sorry. That's why I like to use first names. And in my defense, Ms. Contine signed everything, and she's who I've been dealing with. And it's been a long weekend. I'm sorry.

Sarah -- Ms.~Bradley, Board counsel. How about I say that?

Board counsel wanted to talk about the motives of the Board and whether or not settlement discussions were admissible and whether or not they brought this case in a speedy and timely manner. And we tried to get into that a little bit within this hearing. And I think what it shows is that

this case was not even presented for review by their peer review board and until after May 30th of 2024.

What this Complaint does contain is extremely inflammatory language, Your Honor, which we've talked about. Allegation number 7, which is that this patient was intubated and transferred by ambulance, there's a reason that was in the Complaint, and it speaks for itself. They didn't bring on any evidence to say that Mr. McCleve caused any adverse reaction with the administration of the Botox in this case. I think that that's very, very clear.

But the implication to Mr. McCleve in the notice that he received was that he did, and that's how you prepare to defend yourself. The point of notice is to try to defend yourself. So then they withdrew that hyperbolic statement.

And I think it's important that we pointed out that what's out in the public realm, the allegation. That allegation is out there, and anybody that reads that would draw the same assumption that Mr. McCleve and I did when we read the Complaint, which is that he committed malpractice and caused that.

The answer is not public record. No one

was called to prove otherwise. The motions that we filed in this case are not public record. What does the public see? The Complaint. The reason that's important is because they're going to be asking for discipline, Your Honor.

Mr. McCleve has sustained and suffered extreme loss related to this Complaint. And I'm going to get into that more later. But the Complaint is extremely hyperbolic.

The Board does say one thing that's correct: Your Honor has to look at this case and ask yourself, did the Board prove each cause of action within the preponderance of the evidence?

Ms.~Bradley spent five or ten minutes on recordkeeping. We already conceded that, Your Honor. Mr. McCleve said he didn't produce records, but he did testify that he had records, Your Honor. At one point he even showed up on the screen a photograph of the exact vial. So Ms.~Bradley said there were no records. That's not true.

And there was no counter to Mr. McCleve's testimony. What we saw was Mr. McCleve's letter, which he talked about the med spa. And while it's not the Board's onus to prove Mr. McCleve's case for him, they certainly didn't follow up with

Mr. McCleve the same way that they did Dr. Harris on multiple occasions, asking Dr. Harris to please, please respond.

So Mr. McCleve admitted that he did not produce the records that he has to the Board. He didn't produce the copies.

But what he did testify to is that that day, when that happened, within 45 minutes to an hour, he gave the entire medical history to the treating doctor, Your Honor, and that's in the medical records, which is Exhibit 8.

Mr. McCleve didn't -- he could have done what some unethical, some people would do, which is say nothing. He could have said nothing. This patient was a VIP patient, he wanted a non-disclosure agreement. Mr. McCleve did not honor that, and Mr. McCleve knew he was probably going to lose his job.

But what did he do? He jumped right in there, he said exactly what he did, he told the doctors exactly how much he had injected, it's in the medical record, Your Honor. It's Exhibit 8. That's the point of the medical records, as stated by their own witnesses, is to provide information about that patient for patient care. And

Mr. McCleve did communicate all of that to the treating doctors.

Why is it important? It's important to discipline, Your Honor. He did what some people may not have otherwise done. He admitted wrongdoing. And even Dr.~Sheep said Mr. Cleave is not a liar, he's an excellent person, he's an excellent physician's assistant. That's what their own witness said, a witness who I had never spoken to and who I had no time to prepare for.

I want to talk about the malpractice. Your Honor, this is one of the statutes that is incorporated in the NRS; however, the Board's definition of malpractice -- just for the record, Your Honor, I think it's important because we have to decide on the law here. The Board's definition of malpractice talks about a medical doctor, not a physician's assistant. NAC 630.040 says:

"The failure of a physician in treating a patient to use reasonable care, skill, and knowledge under the circumstances."

This is just another example, Your Honor, their own definition does not apply when it comes to discipline. Having said that, obviously there is a standard of care, and Your Honor has to decide

whether or not, by a preponderance of the evidence, they proved malpractice.

What does the cause of action say? First it says "He injected Botox." That was the basis for them, malpractice. They didn't call a single witness who could talk to you about whether or not that was done within the standard of care.

Their own witness, Ms.~Elmquist, I have to hand it to her, she is very ethical, and she stands by her testimony. No matter how hard on her own counsel, Ms.~Bradley, tried to get her to testify about the Botox, she refused. She said there were no medical records. That's it. That's her -- her standard of care is there were no medical records.

There was no testimony about Mr. McCleve failing to administer the Botox. And that's what we're talking about here, Your Honor: administering Botox.

I don't know if you've ever had fillers or Botox or if anybody else has, but this is not open-heart surgery here that we're talking about. This is an injection done in a very safe place, the hospital, and their own expert could not state that that fell below the standard of care.

What did she repeatedly say? She said

there were no medical records. So what is the Board done here? They've overcharged Mr. McCleve. They have no testimony of malpractice. They couldn't even get Dr.~Sheep to talk about the Botox, because he says, even though he was involved in this boutique medicine, he said Kayle is the one -- Kayle's the expert, Kayle's the one that does the administration of these injectables.

What did he say? He said it wasn't smart for him to do it in the ER. I said it was stupid. Right? And Dr.~Sheep said, I wouldn't call it stupid. I don't know what I would call it.

But what happened? Mr. McCleve lost his job. He violated the procedures of the hospital for treating a patient that was not registered. The Board did not call a single person from the hospital to testify that Mr. McCleve was terminated for falling below the standard of care, and they admitted that that would have been in the response from Dr.~Harris. And it was not, your Honor. Mr. McCleve was terminated for violating hospital privileges.

An example I used in talking to Dr.~Sheep was one that made the news about ten years ago, where Dr.~Tate -- I believe he's now deceased, I

could be wrong about that. But Dr.~Tate brought a loaded gun into surgery, and one of the nurses saw it. He lost his hospital privileges at UMC. This is all a matter of public record. Did that fall below standard of care? Well, anybody can say it's a bad decision. Anybody could say he shouldn't have done it.

But who's to say that whatever care he was rendering with that patient in the surgery that day fell below the standard of care? That's what malpractice is by the Board's definition, which again, only applies to a medical doctor. But the only thing they've proven -- well, let me withdraw that. They haven't proven anything.

Mr. McCleve admitted to records violations and to being terminated from his job for violating policy. We did not need this hearing. They did not need to incur these costs. They did not need to call Ms.~Elmquist, who didn't even support their own allegations.

What did they do? They alleged malpractice at Count I. They can't substantiate it with the preponderance of evidence. They ignore Mr. McCleve's testimony and they want you to do the same thing.

When their own witness said Mr. McCleve is credible, what he said specifically is "Kayle is not a liar." Dr.~Sheep said that, knowing that Dr.~Sheep could be brought up on charges, which, by the way, he hasn't been. But Dr.~Sheep said that Kayle is not a liar.

So what's before you is Mr. McCleve's testimony, who he described exactly what he did. Ms.~Elmquist's testimony, she did not comment on the standard of care in administering the Botox. What did she do? She said it was a recordkeeping violation.

So for that reason and more, they cannot substantiate Count I by their own definition, which is wrong, NAC 630.040, and by their own testimony.

All they've done is charge him with Count II, failure to maintain medical records, and then they put it up in the malpractice cause of action to double-whammy him. That's what they've done. They cannot substantiate malpractice, Your Honor.

So I would say in that respect, that count has not been satisfied in terms of the preponderance of the evidence.

I said on Thursday, and we've said ad nauseam, that Mr. McCleve admitted to a records

violation. They should have spent no time on that. It was admitted. They're likely going to ask for costs related to that. They should be awarded zero, especially with malpractice as well.

Count III, NRS 630.306(1)(b)(2), violation of the standard. What the Board's counsel has said is this relates to the supervising agreement. Ms.~Bradley said, yes, there's an agreement on file. Their own evidence disproves this cause of action.

What do they want to do? They want to argue a bunch of law that does not exist. What does the Board require? They want to ignore their own requirements, Your Honor. What is their requirement? The requirement is that a supervising agreement, which at Exhibit 12, is filed with the Board and signed by the supervisor and the PA. That was done by Dr.~Sheep in this case and filed in March 15, 2021.

Dr.~Sheep's own testimony was that the address on that form was wrong. The Board's counsel keeps talking about the address, where in the statute are they saying Mr. McCleve violated updating records or not keeping -- there's no allegation that the address on that form, which, by the way, was written and presented by Dr.~Sheep.

Nowhere does the Board say that address should have been updated. They knew he was working at various med spas. Dr.~Sheep said he was working at various med spas. Their own exhibit, 12, disproves Count III.

When did Dr.~Sheep terminate the agreement? June 14, 2023. What did Dr.~Sheep testify to? He said Kayle called him the day after this incident in April, he said they discussed it. What did Kayle say? He said the same thing: They discussed it.

Dr.~Sheep did not withdraw his supervising agreement in April. He didn't even do it in May. He only did it after the Board contacted him.

And as he testified, his words, he was afraid of the Board. The Board put in their own exhibit, Exhibit 4, that Dr.~Sheep had been under investigation. That's when he withdrew the supervising agreement.

His testimony, Your Honor, God bless him, he said that it was reasonable for Kayle to know that he was still acting as his supervisor. That's what he said. Did he shift in his chair? Did he change his testimony? A couple of times Your Honor tried to get clarification from him, but what did he

say? He said, yeah, Kayle would have thought that because nobody is talking about what really happened here, Your Honor.

Kayle's working in the ER, and he talked about the stress of the ER. PA Elmquist talked about the stress of the ER. Dr. Sheep's an ER doctor. Ms.~Elmquist talked about how PAs have side gigs. And why is that? Because of the stress of the job, and so they can make more money. It's not uncommon. Their own expert talks about that.

So what was going on here? What was going on? From the time Mr. Sheep -- Dr.~Sheep left My Shape Lipo and Kayle continued to do work there, Dr.~Sheep was still a supervising doctor and he knew it. Now, Kayle also had another one, Schon Roberts, but he also had an ER doc supervisor as well. But Dr.~Sheep knew he was still his supervising doctor.

They continued this relationship. They talked about let's get into "boutique medicine," as Dr.~Sheep called it, which is injectables, which is weight loss, which is really non-invasive, less-risky procedures. [redacted]

That's the business we're talking about

here, Your Honor. Get into the head of PA McCleve, the respondent. Get into his head, that's what you're required to do, because it's his knowledge that's the law. What's in his head? He keeps up the relationship with Andy Sheep. He talks to him. They had text messages. They're meeting constantly. McCleve is the one hustling.

Kayle is the one out there trying to get this business going. He's on the ground meeting relationships and bringing Dr.~Sheep to meet people. Dr.~Sheep testified to that. He testified to going to his home and sitting down and talking. He testified to talking to other spa owners. Dr.~Sheep admitted all that. Kayle's out there hustling, Sheep is doing his own thing, letting Kayle bring him in as a supervising doctor.

Kayle testified that Dr.~Sheep represented to other individuals that he was Kayle's supervising physician. What makes sense? That's the only thing that makes sense. If Dr.~Sheep is meeting with potential med spa owners and potential customers and clients, why else would he be doing that? He's doing that because he oversees what Mr. McCleve does.

They weren't going to open a surgery

center, Your Honor. They weren't going to go into gastroenterology and start doing colonoscopies, and Kayle just decided, well, let me just take a patient and do a freebie at Vista. I'll just do it in the ER. Come on in, I'll use all the equipment in the ER, I'll get some other nurses, I'll get an anesthesiologist to come in. That's not what this is.

He didn't come in and say, I'm going to do a one-off liposuction procedure in the ER. I'm going to put the patient -- I'm going to administer narcotics. I'm going to administer drugs. That's not what happened.

That's what the Board wants you to think happened when Ms.~Bradley said, oh, we need to protect the public and all this. No.

They do need to protect the public. Absolutely. You know what they have the power to do? Come in and jerk his license without a hearing. They have the power to do that. We could be in front of you trying to get his license back. They didn't do that. You know what he can be charged with? Gross malpractice. Gross malpractice. He wasn't charged with that either.

This was a business venture between a

highly skilled, highly knowledgeable, reasonable practitioner, Mr. McCleve, and Dr. Andy Sheep, who had kept in contact with him for years, and that's what the testimony shows.

And the testimony shows McCleve was excited about this. He knew he probably shouldn't have brought this patient into the ER, but he did it. He made a mistake. He brought the patient into the ER, and he injected the Botox. That's it. That's what happened.

A million times over -- I'll withdraw that.

So with respect to Count III, violation of the standard of practice, Your Honor, the Board cannot point to any violation, because what the law says is that the physician's assistant has to have a form on file called the "supervising agreement" with the Board. That's what the rule is.

NAC 630.340, it says "Before providing medical services" -- and I won't keep reading, they have to put the Board on notice and file the form that's promulgated by the Board. The Board's own exhibit was that form that they draft in compliance with NAC 630.340. Exhibit 12 proves that Mr. McCleve was -- did not violate Count III, Your

Honor.

I find it interesting that, with respect to NAC 630340, they don't reference anything about the MD and the MD's requirements. It is the MD's requirement, Your Honor.

Let's look at NPAs, Exhibit 12. Dr.~Sheep was told, come testify to us, come testify before Hearing Officer Halstead. Ms.~Contine called him up, and he said she told him he didn't need a lawyer to testify for the Board. I think that should, at least, apply for some level of credibility on his testimony.

What would happen if I did that in district court if I called up a witness and talked to a witness and made them a promise before giving testimony? I'd be in big trouble. That's sanctionable. It's called "tampering and interfering with witnesses."

And I'm not asking Your Honor to sanction the Board, but I'm asking you to take that into consideration, along with the totality of the conduct of this Board, with respect to any discipline you may or may not recommend for Mr. McCleve.

Mr. Sheep's brought in -- Dr. Sheep's

brought in, he realizes he's in violation of the statute that his PA is charged with, but he's told he doesn't need a lawyer.

Your Honor, there's no evidence that Mr. McCleve is in violation of the standards of practice. None of the witnesses substantiated any of the testimony Ms.~Bradley gave you just a minute ago. You have to look at the law in the Board's own records. The law requires the supervising agreement, and there was one on file. There were multiple.

So then, Your Honor, we look at Count IV. And by the way, just to continue hitting on this point, if you look at Count III, what do they ask for? They ask -- they tell you, Your Honor, that PA McCleve is subject to discipline provided in NRS 630.352. No, he's not. That statute doesn't apply.

Let's look at Count IV, Your Honor, statutes of practice within the scope. What does the NRS reference as scope? It says:

"Practicing or offering to practice beyond the scope permitted by law or services which the licensee" -- that's Mr. McCleve -- "knows or has reasons to know that he or she is not competent to perform or which are beyond the scope of his

training."

Nowhere in the statute does it say he can be disciplined if he performs a service in an ER on a patient that wasn't registered. The law says "the licensee," what he knows, what he has reason to know, what he has reason to believe within the scope of his training and his competency.

And what did we hear from Dr.~Sheep? I'm glad they called him. I'm glad they called him because, otherwise, you would just have Kayle's testimony about his competency. But what did Dr.~Sheep tell you? Kayle was an expert at this type of medicine. He had administered Botox hundreds of times. Dr.~Sheep himself said that he wasn't necessarily qualified. He said Kayle was an excellent PA.

He also volunteered that patients loved PA McCleve. We don't have a single patient complaint here. We don't have anybody here challenging his competency. This was not -- this complaint, Your Honor, was not initiated by a patient. And the Board's going to say that's -- it doesn't matter. They can investigate. And I'm not saying they can't.

But with respect to competency, this

complaint was initiated because Vista Hospital was required by their policy to notify the Board because Mr. McCleve had been terminated. That's how this complaint was initiated.

They didn't call Patient A, who we know begged Kayle to continue performing these services. They didn't call any other patients. They disclosed Ms. Elmquist, who could not even opine on his competency.

But the law requires you to look at the preponderance of the evidence, and that is McCleve's own state of mind. They don't -- they keep -- Your Honor, I want you to listen to what they say. They say, was it reasonable for him to believe this or that? Maybe you can ask that. And if you ask that, I would say, absolutely a thousand times, it was reasonable.

But that's not what's in the statute. Statute doesn't say, well, as long as it was reasonable that Mr. McCleve knew he was competent. That's not what it says. That's not what the law says.

What's happening is they're co-mingling malpractice with outside of the scope, with having no supervising agreement, with recordkeeping, and

they're trying to co-mingle all the standards of care without directing you to the law.

Your Honor would know if this isn't true. But in my mind, I'm the one that's been directing you, for the most part, for the most part, to the actual law.

In summarizing the testimony and in reporting to the Board of your findings, you have to substantiate with a preponderance of the evidence, Your Honor. And there is no evidence here that he was practicing outside the scope, nor is there any evidence that the licensee knew or had reason to know that he is not competent.

To the contrary, Dr.~Sheep is telling him, we're going to start this business. Would he do that if he wasn't competent? No. Dr.~Sheep told Mr. McCleve and told others that this worked out great because they still had a supervision agreement.

Now, he changed his testimony a couple of times on that. I understand that. But when pressed, he was very clear. He said, I think it was reasonable for Kayle to think that we still had a relationship. That's what he said. And he also said he didn't withdraw the supervision agreement

until he got the complaint from the Board.

So whether or not the Board has met its burden, the preponderance of the evidence, the answer to that is no.

Now, the Board cites NRS 630.346 for that position, doesn't really matter, but the real standard is NAC 630.410, which also says you must support the findings with the preponderance of the evidence. The point is, they continue to co-mingle their own statutes.

I want to talk about discipline for a second. As I pointed out in the Board's Complaint, they ask for discipline under the wrong statute. They ask for discipline under NRS 630.352.

But as we already know, the Board promulgated specific discipline for physician's assistants, and the discipline that can be imposed is not what they say. It's in NAC 630.410.

Now there's a lot of overlap, and they didn't ask you for any particular discipline. It looks like they're leaving that up to you. But I think in analyzing, you should be pointed to the direct statutes that actually apply.

I think you should also take notice that the Board pick and chooses which of its statutes to

follow. They were required, as I said, Your Honor, under NRS -- I'm sorry, NAC 630.390, to give Mr. McCleve's supervising physicians notice of this hearing.

It says specifically:

"Before the Board takes disciplinary action against a physician's assistant, the Board will give the physician's assistant and his or her supervising physician a written notice specifying the charges made against the physician's assistant, and stating that the charges will be heard at the time and place indicated in the notice.

"The notice will be served on the physician's assistant and the supervising physician at least 20 days before the date fixed for the hearing."

That's their own rule, and I don't think we should discount that. That's what the Board wants you to do. They want you to pick and choose, they want to pull something out of one section and ignore another section, they want to try to bring in regulations and say, well, the regulation changed. But we don't know, we don't have notice. What's notice? The Complaint.

Well, the statutes they cited in the

Complaint are wrong. Well, Mr. McCleve's, supervising physicians, which were Harris and Sheep, didn't get notice of the proceeding. Let's ask ourselves, why would a supervising physician be required to be a party to this process?

I liken it to a lawyer and a paralegal. If my paralegal does something wrong, commits some sort of malpractice -- and not necessarily the best example because they can't necessarily be sued for malpractice -- I'm held accountable for what she does.

The physicians oversee Mr. McCleve. That's what the law requires. The physicians are required to be here, the physicians are mandated to be here, if they had notice.

And what is the law say, the NAC, their own law? "Before any disciplinary" -- that's what it says, before any disciplinary action can take place, the supervising doctors have to be involved. That's their statute. NAC 630.390.

They notify the supervisors. They didn't even call Dr.~Sheep until they had an oh crap moment. Then they call him up and tell him he doesn't need a lawyer.

So what are they doing? They're going

after Mr. McCleve and letting the supervising doctor off the hook. How is that justice? They want to protect the public? Ms.~Bradley says she wants to protect the public? Why isn't Dr.~Sheep here? He's a nice guy, I like him. A young guy, obviously.

You want to protect the public? Why wasn't Dr.~Sheep brought up on the same counts? You protect the public by going after the MD. Why wasn't he told, you violated statutes, you violated the law? Because they're not going after him right now; they're going after Mr. McCleve. That has nothing to do with this particular case.

It has everything to do with another case, which, contrary to what Ms.~Bradley said, they refused to deal with unless these cases were combined. Why? Because they know that when you can combine claims, you can paint a false narrative that someone is a bad PA or did something wrong, and where there's smoke, there's fire.

If there's two complaints, he must have done something wrong. That's why we're here.

Mr. McCleve has zero prior discipline. None. In looking whether or not to propose discipline, ironically, you would think that a respondent, whether it be an MD or a PA, you would

think that we would know the criteria for discipline.

I had to search and search and search and search. And you know what? There's no real-hard-and-fast rule. There's no specific statute. But I found past cases. And these are the factors, Your Honor, at least based on my research: severity and recency of the offense.

What was the offense? Mr. McCleve administered a Botox injection in a safe environment. No one said he did so below the standard of care. They said he violated records policies and he violated Vista rules. It was a safe environment. It was a Botox injection. Let's get real. That's what it was. This patient did not suffer an adverse reaction.

What's the other factor? Recency of the offense. This all took place two and a half years ago. You looked at all the records, all the dates on those records, and this investigation was completed a year and a half ago.

They didn't tell you when they submitted this for review, but we could figure it out. Ms.~Elmquist said she submitted her report in September 2025. I asked her how long it took her to

physically complete a report, and she said typically 30 days, sometimes 60, but she didn't have the information.

Well, we know the other Board matter, which is still pending, the hearing concluded on May 31st, May 30th. June, July, August, September.

It looks to me like this case was submitted after the other case went to a full board -- or went to a hearing. That's what it looks to me like. It didn't look to me like, certainly, the recency of the offense was a factor because the offense was April of 2023.

They could have given Ms. Elmquist all the records in January of 2024. But what did you hear? You heard we were talking about trying to resolve this case because the Board didn't care about it. [redacted] They don't care. They didn't care about this.

Degree of deviation from the standard of practice. They didn't have a witness that said he deviated from the standard of practice. They said -- the witness said he deviated from the recordkeeping statute.

Nobody said he deviated from the standard of practice, because they didn't have a witness to

talk about the standard for cosmetic injectables.

They want to confuse you. They want to cram down this false allegation that, well, it wasn't reasonable for him to do it at the hospital. That's not the standard. He was fired for doing that. The standard is -- well, it's hard to say since they cited a standard that doesn't apply to Mr. McCleve.

But unlike a lot of individuals, Mr. McCleve admitted wrongdoing. He fell on his sword. He wrote a letter that was not advisable for him to write if he was trying to defend this case. He admitted to everything.

But not a single witness said he deviated from standard practice. They said he deviated from Vista, from protocol, not treating a patient who is registered. He already admitted to that. We didn't need any testimony on that. Why did they do that over and over and over again, and waste everybody's time on recordkeeping and he violated Vista's protocol? That's not the question. The question is, did he deviate from the standard of care in administering the Botox?

They want to try to tell you what the question is. They want to try to change it. But,

Your Honor, you're wise, you've been through these hearings. I've heard you throughout this entire process say: Attorneys, focus on what will help me make my determination.

Because you're looking at the law and you're looking at the facts. What's the law here? Well, they cited the wrong one, that's okay, but you need a preponderance of the evidence. There is none.

Another factor that, according to my research, is looked at is evidence of rehabilitation. What?

Mr. McCleve was without work for a year. He could not get a job in Nevada. He testified to that, because of two complaints that have not been proven but because he's subjected to discipline, he could not get a job in Nevada.

What rehabilitation did he need? I don't know. We try to engage in conversation with the Board. What rehabilitation would he need? [redacted]

Current ability to practice safely. There's been zero evidence that he's not capable. Zero. He finally did find a job, thank God, but

it's not what he wants, really. He's having to learn a whole new practice area. And as you learned, Your Honor, there is no residency. These PAs learn on the job. He's now in orthopedic care, pain management. That's not really what he wants to do. There's no evidence that he's not competent now.

Past disciplinary history. There is none. And if the Board wants you to look at the other case, you can do that, Your Honor, it's on appeal. You know, Your Honor, that we've raised a number of issues of violating their own statutes and various issues, but the truth is there's no prior disciplinary history. Zero.

Mitigating and aggravating factors, and I've hit on those. There are no aggravating factors. The Board hasn't given you any. They tell you -- they give you a conclusive statement that they want to protect the public, but they didn't say from what. From Mr. McCleve administering Botox? He's qualified to do that. He's not doing that right now. But there are no mitigating or aggravating factors. The mitigating factors, I've already laid out.

It's my position that he's been punished

enough. He's been punished enough. He admitted wrongdoing. This whole process was unnecessary. We would have entered into a stipulation with the Board. They forced us to come here.

Ms.~Contine said she refused to give me a settlement proposal. You have the email, she said they won't even consider it. We're going forward here. That's what she said. I think that's an aggravating factor, Your Honor.

We fall on our sword. Ms.~Bradley read out all the things we admitted to. We admitted to everything, but they won't agree to a stipulation, because they want to string him up and try to paint him as some incompetent, immoral, bad decision-maker deserving of whatever punishment they haven't even asked for.

One other thing I want to hit on, Your Honor, with respect to discipline -- because they asked for fees and their Complaint, Your Honor. They ask for fees. If you look at -- well, it's in there. They asked for fees and sanctions, I believe. Yes, at number 4 in their prayer for relief. Your Honor, they don't get fees. What applies to discipline in this case, there's no provision for fees. I'm pulling up the statute,

Your Honor. Let me pull it up real quick.

This comes from the Board citing the wrong statutes. The discipline that's allowed in this hearing is in NAC 630.410. That's promulgated by the Board, Your Honor. The provisions that apply to discipline for a physician's assistant are at NAC in 630.280 through NAC 630.495.

They ask for fees. Nowhere at NAC 630.410 does it say that they get fees. And I would argue that they're not entitled to them anyway.

It does say that they can seek costs, only after submission of what those costs are. We would say there's absolutely zero, zero support for that in this case, for the reasons I've laid out.

Number one, we didn't need to be here. We would have stipulated. They called Ms. Elmquist. She couldn't sustain any of their allegations other than the recordkeeping. The Board has cited the wrong statutes. All the things I've already said, Your Honor.

Their own exhibits help our case. Their own exhibit proves he had a supervisory agreement. Their own rebuttal witness was honest and said it was reasonable for Kayle to believe he was his supervisor.

But you said a minute ago, Your Honor, that the Board leaves it up to you. I just want you to know that when you're looking at discipline, it's not what the Board's typically going to tell you to do. It's actually at NAC 630.410. It doesn't include fees.

So with that, Your Honor, I would submit that the Board hasn't proved up a single element of their Complaint. To the extent that there are allegations in the Complaint that are true, that's because we've admitted them. They didn't prove them up. Mr. McCleve admitted it over two years ago in his letter.

They've overcharged him. This should have been nothing if not a recordkeeping violation.

Their own evidence proves he was working within his own scope and with a supervising agreement that was on file with the Board.

With that, Your Honor, I would request that none of the allegations be sustained. The recordkeeping, as of his own admission, I would ask -- he's already been disciplined enough -- that the most he is subjected to is the bare minimum. The bare minimum.

I know that fines are allowed, letters of

reprimand, seek continuing ed, we would have agreed to all that. Now he's likely going to have a judgment against him instead of a stipulation, because that right was removed from us. They want a judgment against Mr. McCleve. That's what they want.

And I would submit to you that none of the allegations are sustained and there's no cause for discipline. Thank you.

HEARING OFFICER HALSTEAD: Thank you, Ms. Zastrow.

Ms.~Bradley, can you address the argument that the statutes cited in the Complaint are not applicable to Mr. McCleve?

MS. BRADLEY: Absolutely.

First of all, NAC 630.410 was repealed on September 13, 2024. So that was prior to the filing of the Complaint. NRS 630.352, I don't see anything in it that says it doesn't apply to non-physicians. NRS 630.352 specifically talks about respondent --

HEARING OFFICER HALSTEAD: Hold on, hold on. I'm trying to write these down so I can look them up, and you're going awful fast.

MS. BRADLEY: I'm sorry.

HEARING OFFICER HALSTEAD: You said NAC

630.352 doesn't say it doesn't apply to non-physicians?

MS. BRADLEY: That's NRS. I'm sorry.

NAC 630.410 was repealed in September 2024. NRS 630.352, the title is "Disposition of Charges, Adjudication by the Board," nothing in there says it doesn't apply to physicians. In fact, it just refers to respondents. And I believe respondents are defined in NRS 622A. It's, essentially, just the licensee in a matter.

And so we use NRS 630.352 for all of the license types that the Board issues. And that's part of the reason for repealing 410, is it seemed duplicative, because we already have a provision in the Nevada Revised Statutes that addressed disciplinary options for the Board, if a finding is made.

I would note, though, if we look at 352, talks about findings and conclusions of law submitted after the hearing, but the disciplinary recommendations are actually made before the Board at a public meeting. And that is when the Board -- well, the Investigative Committee submits their recommendation, potential cost memorandum, things like that.

So, yeah, we don't address that in the hearing because we don't have all the costs until the hearing is done. And we don't know that there will be a finding.

And so we don't address discipline at all until we know what the findings may be, because, obviously, that's going to impact what we recommend for discipline. We need to see what the recommendations are.

With regard to NAC 630.390, that was repealed as well. However, that repeal is effective August of this year, so August 19, 2025. That regulation had been pending for a little bit.

But the reason, again, for repealing that -- and I can give you the R number if you'd like. So 390 was repealed, NAC 630.390 was repealed in R177-24.

And the reason for that is -- well, first of all, nothing in that regulation says that the supervising physician's respondent, just that they were to be given notice. And we only include them as a respondent if the investigation -- I mean, if that's what the Investigative Committee agrees to, asks us to do.

So it doesn't say they're a respondent,

just that they should know about the case. I think the evidence is both did in this case because they got letters.

And then the R number that repealed the 410 provision -- I'm sorry. I want to make sure I'm on the right page here.

Yeah, so it -- it's -- I think I pulled up the wrong regulation for that, but I can tell you from my -- so, yeah, NAC 630.410, it was repealed by R068-23. That was stamped by the Secretary of State on September 13, 2024, after approval by the Legislative Commission.

And in that same regulation, the provision, NAC 630.370, there's a reference to 410, and that was replaced with NRS 630.352. So any references in the regulations that refer to 410 should have been replaced with NRS 630.352.

But again we would submit that that's been -- 352 would govern the discipline over the regulation anyway. They were relatively similar. I think the difference was the regulation said a $5,000 fine, and the statute was amended in 2023 to increase the fine to 10,000. And that change wasn't made in the reg, and, instead, it was just repealed because it was duplicative, in our view.

Is there other questions you want me to address?

HEARING OFFICER HALSTEAD: No, there's not. I wanted you to address the allegations about the statutes and the NAC provisions as needed.

Are you comfortable that you've addressed that sufficiently?

MS. BRADLEY: I think so. I do -- I would note too that NRS 622.400, it's a separate provision that's used with regard to recovery of fees in an administrative matter, and again, in our mind, we're not even there yet because we don't even have any disciplinary finding.

But NRS 622.400 specifically says that regulatory bodies -- and we're included in that definition -- can recover attorney's fees and costs. But again, we have to have a completed matter so we know what those are, and there has to be a finding of guilt or a settlement agreement wherein someone admits guilt.

And so we don't have that yet. But we will plan to present that to the Board, if and when it's appropriate time. So 622.400 does apply, and, yeah, I mean, I believe the statutes are accurate.

The malpractice definition was updated

after the allegations in this case occurred. But prior to the filing of the Complaint, where, you know, it did say we admit the failure of a physician and treating a patient, it's been admitted, it's been updated to include all of the license types.

I would submit I think that was an oversight. It's a definition saying how the Board interprets the word "malpractice." So even if, perhaps, it didn't include every single license type the entire time it's been in existence, I mean, it is saying that's how the Board will define it.

And again, it's been updated. Let me give you that date. I think we talked about this before, but I just want to make sure I --

Yeah, that was updated June 2, 2023. It's in R171-20, so it was probably right around the time -- well, it was after the event on April 8th, but I don't recall the Board learned about this incident in June or not.

Either way, you know, I would submit that the intent of the Board always was to include all the license types. I mean, it says "For the purposes of this chapter, malpractice means," and it's the Board's definition.

And I believe that's all of the statutes.

I would also say just -- I mean, we talked about this before -- that, again, the discipline is addressed in NRS 630.352, and that's something that's brought up before the Board. The Board's regulations talk about the synopsis, including a summary of the record, credibility of witnesses, recommendations with that regard. And then 622A, NRS, also talks about the recommendations.

And I think, as a practical matter, what I've seen in my time at the Board, the hearing officer will recommend what factual things have been proven, what statutes may have been proven, and, potentially, credibility of the witnesses.

I haven't seen specific, like, this is the disciplinary sanction that occurred. I haven't seen that in a hearing officer. It's normally just what is recommended to be found, proven, and then the Board reviews that and then agrees or not. And then they talk about discipline as it's appropriate after they read everything.

That's all I would say. Thank you.

MS. ZASTROW: Your Honor, can I respond?

HEARING OFFICER HALSTEAD: Briefly, Ms. Zastrow.

MS. ZASTROW: Can I share my screen with

you, Your Honor? Everybody?

HEARING OFFICER HALSTEAD: If you're going to refer me to a statute, you can just tell me what it is.

MS. ZASTROW: I just want to -- I want to demonstrate the statutes. Is that okay?

HEARING OFFICER HALSTEAD: We'll just --

MS. ZASTROW: I need to show you something, Your Honor.

HEARING OFFICER HALSTEAD: Okay. Well, why don't you just cite me to what you want me to look at?

MS. ZASTROW: Because I have a visual -- okay. I'll do what you ask me to do, Your Honor.

If you look at NRS 630.275, NRS 630.275 regulations concerning licensure. Now, just a second ago, Ms.~Bradley said something about the intent of this or that, the intent of the Board, our intent this, our intent that. You have to look at the statutes, and it's my position that the intent is extremely clear in this one.

NRS 630.275, regulations concerning licensure, it says:

"The Board shall adopt regulations regarding the licensure of a physician's assistant."

List all, basically, what the Board is required to do, limited but not -- or required, but not limited to.

So if you go to -- and what I was going to show you, Your Honor, is if you look at the entirety of NRS 630, it applies to physicians, comma, physicians assistants, comma, medical assistants, comma, perfusionists, comma, anesthesiologists assistants, comma, and respiratory care assistants. It applies to multiple.

And NRS 630.275 says:

"The Board must promulgate regulations for physicians assistants."

They did that. That's the intent. Where did they do that? In the NAC.

NAC 630 says same thing: physicians, physicians assistants, medical assistant. There's a group of who those statutes apply to, Your Honor. The section that applies to physician's assistants begins at 630.280 and ends at 630.415.

So the Board said in the NRS, we've got to promulgate statutes that apply to PAs. What do they do? They promulgated statutes that apply to PAs. What did I do? I pointed that out. I was not following what Ms.~Bradley was saying very clearly.

She didn't give us specific dates on when what was appealed or wasn't appealed.

The definition, for example, of malpractice is for doctors. It is. It was when this was filed, and it still is. Now, I'm just making an argument, Your Honor, they're trying to pick and choose.

But with respect to the disciplinary action and disciplinary grounds, et cetera, that is at NAC 630 not NRS; it's at NAC 630, and I gave you those statutes. NAC 630.380, NAC 630.390.

I heard her just a minute ago say with respect to in NAC 630.290, I don't know when she said that was repealed. I'm looking at this, the code right here, and what does it say? This is exactly what it says, Your Honor, you can read it:

"Before the Board takes disciplinary action against a physician's assistant, the Board will give the physician assistant and to his supervising physician a written notice specifying the charges made against the PA and stating that the charges will be heard at the time and place indicated in the notice.

"The notice will be served on the physician's assistant and the supervising physician

at least 20 days before the date fixed for the hearing. Service of the notice will be made by any investigation and subsequent disciplinary proceedings will be conducted in the same manner."

That's their statute. They're required to give the physicians notice. I don't know, is Ms.~Bradley saying that statute doesn't apply now or it didn't apply at the time this was served? It's mandatory.

They didn't call the physicians in because they were not going to help their case. This is a mandatory statute, promulgated by the Board, required at NRS 630.275.

I understand administrative law requires reference to 622A at times if there's going to be an appeal, you know, a petition for judicial review, 133B. But these statutes, 630 and NAC 630, are read together. And the NRS requires the Board to adopt specific statutes related to PAs. And those are the sections that I outlined to you.

Their Complaint references the wrong statutes at times. Certainly when they're asking for discipline, they don't reference the right statute. I'm not saying they're not entitled to seek discipline, but what kind of notice do we have

here? What kind of sloppiness is allowed on the Board's part?

They're here accusing Mr. McCleve of making a bad decision. Let's take a look at their Complaint. Let's take a look at the mistakes in the Complaint. Let's take a look at the picking-and-choosing that the Board does, their conduct, before they start pointing fingers at other professionals.

I'm just leading you to the specific statutes. I didn't hear what date something may not be applicable, but I do know that PAs are regulated within the NAC, as promulgated by NRS 630.275.

I also know that NAC 630.390 mandates the physician receive notice, and that didn't happen in this case.

HEARING OFFICER HALSTEAD: Ms.~Bradley, can you just remind me, we spoke about NAC 630.410, and you said that was repealed by 06823.

MS. BRADLEY: Yeah.

HEARING OFFICER HALSTEAD: What was the time? So what is the time? Where am I looking for discipline, current, applicable to Mr. McCleve?

MR. BRADLEY: You're looking in NRS 630.352.

HEARING OFFICER HALSTEAD: Well, I'm just asking, was it repealed before or after the charges in this matter? I'm talking about NAC 360 -- or 630.410.

MS. BRADLEY: 410 was repealed by R068-23, and that was effective September 13, 2024. And the Complaint was filed November 22, 2024, so 410 was repealed.

And then recently, NAC 630.390 was repealed. It was not repealed prior to the Complaint being filed, but prior to the hearing. It was repealed effective August 20, 2025. The meeting of Leg Com was August 19th. So, I guess, about 60 days ago, 390 was repealed with regard to the notice of -- to a physician.

And again, I would just point out, I never said that they were respondent; just that they were supposed to be informed.

HEARING OFFICER HALSTEAD: Okay. Anything further before this matter is submitted?

MS. BRADLEY: Not for me.

HEARING OFFICER HALSTEAD: Ms. Zastrow?

MS. ZASTROW: No. Thank you, Your Honor.

HEARING OFFICER HALSTEAD: Okay. Before we go off the record, since we have all the parties

and counsel available in relation to the matter that's on appeal, would -- I have some questions about a Supreme Court order. Would the parties object to staying on the record and addressing that other matter with me?

MS. ZASTROW: No objection, Your Honor, as long as we state that matter for the record so it's clear what we're talking about, though.

MS. BRADLEY: Yeah, we'll have to, I guess, separate the transcript or something.

HEARING OFFICER HALSTEAD: Okay. All right. So we'll be off the record in case number 244228-1, and that matter will be considered submitted.

(Proceedings concluded at 10:27 a.m.)

STATE OF NEVADA)
) ss.
COUNTY OF WASHOE)

I, BRANDI ANN VIANNEY SMITH, do hereby certify:

That I was present on September 22, 2025, via Zoom for the hearing and took verbatim notes of the proceedings entitled herein, and thereafter transcribed the same into typewriting as herein appears.

That the foregoing transcript is a full, true, and correct transcription of my notes of said proceedings consisting of 79 pages, inclusive.

DATED: At Reno, Nevada, this 30th day of September, 2025.



BRANDI ANN VIANNEY SMITH

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EXHIBIT 1

EXHIBIT 1

NEVADA STATE BOARD OF MEDICAL EXAMINERS
325 E. Warm Springs Road, Suite 225
Las Vegas, NV 89119

Aury Nagy, M.D.
Board President

Edward O. Cousineau, J.D.
Executive Director

June 5, 2023

David McCleve, PA-C
[redacted]

RE: BME CASE #: [redacted]
PATIENT: [redacted]

Dear Mr. McCleve:

We have received information and a complaint regarding your medical treatment of the above named patient. The complaint alleges your care and treatment of the patient may have fallen below the standard of care and your hospital privileges suspension from North Vista Hospital.

It is alleged:

1. You had your hospital privileges suspended by the MEC (Medical Executive Committee) at North Vista Hospital for injecting Botox or a similar substance in a "private patient" in the Hospital without Hospital authorization, patient registration, patient consent, or documentation of your competency.

3. Complications arose and the patient suffered an adverse outcome and had to be treated at a higher level.

1. Please list all hospitals and/or facilities where you currently hold medical staff privileges.

2. Please provide the name and location of any and all clinics/facilities where you provide medical services.

According to these allegations, you may have violated the Nevada Medical Practice Act, Nevada Revised Statutes, Chapters 629 and 630, and Nevada Administrative Code, Chapters 629 and 630 (NMPA).

In order to determine whether or not there has been a violation of the NMPA, **please provide a written response to each allegation noted above, as well as complete health care records for the aforesaid patient[s]. Include copies of any imaging, x-ray or other films that were produced during treatment of this patient.** Please include any further information you believe would be useful for the Board to make a determination in this matter. **Please reply to this request within 30 calendar days.**

Please return the health care records with the signed Custodian of Records Affidavit,

enclosed herewith. If you are not a custodian of the patient records, please indicate where the health care records can be obtained.

The Nevada State Board of Medical Examiners investigates all information received concerning possible violations of the NMPA. We make no determination as to whether or not there has been a violation of the NMPA until a thorough investigation is completed. As a physician under investigation by the Board, you are required by the NMPA to provide the requested information, and your cooperation is not subject to the whistle-blower protections provided to physicians in NRS 630.364(3).

Please be advised that if the particular allegations referenced above did occur, and depending on the facts and circumstances, then you may have violated the NMPA, specifically including but not limited to: NAC 630.040, NRS 630.301(4), & NRS 630.306(1)(b)(2), NRS 630.3068(1)(d).

Respectfully,

Don Andreas, CMBI
Sr. Investigator
Las Vegas Office

EXHIBIT 2

EXHIBIT 2

Donald A. Andreas

From: David McCleve [redacted]
Sent: Friday, July 21, 2023 8:26 PM
To: Donald A. Andreas
Cc: Bret Whipple; Lisa Zastrow
Subject: BME

WARNING - This email originated from outside the State of Nevada. Exercise caution when opening attachments or clicking links, especially from unknown senders.

Response to the Board:

Don,

This correspondence is in regards to BME Case [redacted]

1: I am not currently working as a medical provider; I am not affiliated with any hospitals, facilities, or medical clinics that provide medical care.

I have worked in emergency medicine for 9 yrs with out incident or malpractice claim. I have cared for the people of Las Vegas with the highest level of medical care for 9+ years in various emergency medical settings throughout Las Vegas and Arizona. Up until the first part of April (approximately 6+ yrs in total), I was gainfully employed with Superior Emergency Physicians who staffed North Vista Hospital emergency department. Never at any point during my time there, did I receive any formal reprimand or disciplinary action while caring for the people of Las Vegas. I am proud to acknowledge this given the dynamic of how emergency medicine is an extremely difficult setting to work in and those who choose to work in this area of medicine are subject to a significant amount of moral injury, emotional abuse, physical abuse, extreme caregiver fatigue, medical pier and hospital management scrutiny, time away from family, substance abuse, and mental health issues that are directly correlated with the dynamic that exists in these settings. (If one were to need validation of the aforementioned, please speak with the loved ones who work in this environment). And while these issues are omnipresent with every medical provider who works in this setting, we do it because we love being able to intervene in peoples lives in a way that very few people are able to; we provide comfort, solace, reprieve from physical ailments, life saving interventions, and a continuos /100% effort to ensure that our society is cared for when they enter whatever emergent medical facility across the country.

Notwithstanding the stressors of the ED, I have truly cared for my fellow man and have ensured that I will never be questioned about the appropriateness of my medical interventions in every encounter I have had during my career. However, these stressors and the recent malpractice allegations made toward me have made me question my ability to remain in medicine. I have found myself questioning whether or not I want to remain in medicine at all given the current status of our medical system: medicine is no longer about caring for your fellow man and is relegated to a system which is driven and predicated on political and financial influence.

It is because of these stressors that medical providers look for other ways to provide medical care in settings less demanding than the ED and more specifically why I have continuously looked for avenues to provide medical care in settings with less abuse, less moral injury, better patient interactions and connections, more smiles, and a renewed sense that I am indeed helping my fellow man.

In the early part of this year, I spoke with Andy Sheep MD about providing medical services to various med spa settings. My intent was to create a medical practice in order to offer appropriate medical services in accordance with the medical bylaws of the NRS in these settings knowing that there is a significant amount of medical incompetency, malpractice, and lack of medical knowledge that exist in the med spa industry: my intent was to provide medical care equal to or higher than the "medical standard" that the laws of Nevada have enacted for the protection of the public. Knowing the mission of the medical board and the current climate of the med spa industry, together a medical supervisor and myself would appropriately treat, care for, and manage the medical practice inside current existing med spas who are operating outside of their scope of practice and risking the health and safety of the public. (I discussed this idea of providing this service with 3 separate medical doctors in order to gauge viability, medical appropriateness and compliance to the NRS, and determine if a working relationship between the provider and myself would lend itself to success.) After lengthy discussions, Dr. Sheep and I verbally committed to undergoing this endeavor and I began engaging in discourse with existing med spa owners who were interested in providing appropriate medical care.

Prior to solidifying a formal written agreement with any med spa owner or Dr. Sheep, but after acknowledgment of the appropriateness and commitment to offering this service, I was frantically contacted by a med spa owner and was strongly influence to provide service to one of her "VIP patients." The image was portrayed that her "VIP client" needed paralytic therapy as soon as possible so that he could attend a fund raiser in the near future. She mentioned his affluent status and his ability to refer additional clients with similar socioeconomic status. The med spa owner verbally acknowledged that she had additional treatment modalities that the patient had undergone thus far and he would receive additional future treatments if I could help treat him with the paralytic therapy. Acknowledging the value that a client with those type of social connections could provide, I consented to treat this patient and scheduled an appointment for him. On the day of the appointment, I was unable to gain access to her treatment facility and thus contacted the med spa owner informing her that I would not be able to carry out the treatment: I instructed her to inform the patient of the events and we could reschedule. A return phone call from the med spa owner yielded emotions of anxiety, despair, and anger given the circumstances. She requested that I contact the patient and I agreed to do so. My conversation with the patient was one of desperation and pleading while he explained the direness of him needing to receive treatment that day. The patient repeatedly propositioned and suggested that he would offer significant compensation for the paralytic services if it were performed that day. I informed him that I could not return to the office as I was currently en route to work my shift at North Vista Hospital. It was at this point the patient engaged in verbiage acknowledging the ease of treatment modality, speed with which his previous paralytic providers would administer, and the ability to receive treatment almost anywhere. The patient continued with his pleadings and requested that I perform the treatment in the parking lot citing his urgency for treatment. I reluctantly consented and invited the patient to meet me at North Vista Hospital.

Upon arrival, I completed a series of medical screening questions:
Pt admitted to recent extensive substance abuse with MDMA, Cocaine, EtOH, and others citing he was celebrating recently impregnating his girlfriend.

Pt did not mention any additional medical conditions or any medications he was currently taking.

Pt admitted that he was late for an engagement at a day pool where he planned to "party" with his "boys" immediately after treatment.

Pt admitted to previous paralytic therapy without reaction.

I prepared a location within the hospital, Constituted the paralytic, clean the patient extensively with an alcohol prep pad, and administered the paralytic. All of the supplies were my own and were purchased with the intent of providing services for different med spas.

Pt expressed immense gratitude and offered to pay me $2000 for the paralytic administration which I declined.

Patient sent me a personal text with the with the contact info of his lawyer so that I could sign a Non Disclosure Agreement. (Pt expressed interest in future treatments as well as connecting me with his "celebrity" clients.

Patient also invited me to his day pool outing: I respectfully declined.

Patient invited me to "go party" with him and his friends later on in the evening: I respectfully declined.

Patient then exited the hospital on his own volition and physical efforts with out any signs or symptoms suggesting abnormal pathology.

30 to 45 minutes later, Patient was brought in on a gurney after being found down next to his vehicle in the parking lot.

I presented to the ER doc that assumed care of the patient. The patient was unable to communicate, and myself knowing that all details of the patient's past medical history could help ensure the highest level of treatment and intervention, and despite knowing the potential ramifications and acknowledging treating the patient previously on hospital premises, I still purposefully informed [redacted] of the patient's entire medical history including substance abuse history, Psychiatric history, my recent medical intervention, and medical screening exam so that the patient could receive the highest level of care. (In conjunction with [redacted] review of Pt's medical record showed that the was previously placed on an psych hold for crushing up his prescription medication in an attempt to get high and commit suicide amongst other psychiatric incidents and hospitalizations). [redacted] contacted poison control it was determined that the pt's clinical reaction was not caused by the paralytic treatment: poison control citied the onset of efficacy being days to weeks of the paralytic. (See hospital record). Review of packet insert and literature did not yield any findings or reports that are consistent with the patient's then physical presentation being caused as a side effect of the paralytic. Immediately after the patient was transferred, I had a lengthy conversation with both Dr. [redacted] and Dr. [redacted] [redacted] (SEP owners) and I recounted the events directly to them prior to leaving the hospital around 6 pm that evening. I was counseled by Dr. Harris to go home and to not speak with hospital administration.

Pt. was transferred to Sunrise Hospital where I was able to follow up with him several days later: I presented to his room and had a lengthy discussion with him of the transpired events.

I contacted the manufacture of the paralytic and it is worth noting that similar to the position of Poison Control, the manufacture never has recorded this type of reaction and currently vehemently deny the paralytic's association with the patient's presenting symptoms.

In addition, I personally contacted two well know and well respected neurologist and their position mirrored those of Poison Control and the Xeomin manufacturer.

North Vista Hospital reported to the national practitioner data Bank, the following: " The patient ultimately suffered an adverse outcome requiring transfer to higher level of care". (This referring to the paralytic treatment that was performed prior to the patient formal ER evaluation.). GIven the aforementioned, this statement appears to be medically unsubstantiated and possibly utilized to hyper-sensationalize the details of the event.

I presented to the Medical Executive Committee of North Vista Hospital on Wednesday June 21st and acknowledged the error of my judgment. I acknowledged the inappropriateness of treating a private patient on hospital grounds thus violating the bylaws that govern the practice of medicine at North Vista Hospital. I expressed sorrow, empathy, and acknowledgement of my actions. I expressed forgiveness for violation of the bylaws and code of ethics by treating this patient on their grounds. I substantiated truth and corrected rumors that arose regarding the incident. I addressed my medical piers and witnessed the respect and empathy that they had for me based on the innumerable appropriate interactions we have had throughout my time at North VIsta. I have suffered complete loss of income and a damage of reputation because of this decision. My family has suffered significantly because of the repercussions of this decision. I have suffered severe moral injury and have chosen to step away from medicine for the time being.

I am a good provider with a correct moral compass. I have woke up everyday for the last 9 years and have been able to look at myself in the mirror and can unequivocally say that I always take care of patients to the very best of my abilities and training. I provide the most appropriate medical care that is commpassionate, understanding, and comforting recognizing that I have the privilege of caring for my fellow man. I have always deferred care to other medical providers when it is in the best interest of the patient and I feel that they might need a higher level of care. I have always met the standard level of care when treating patients and do not believe that I fell below the standard level of care in this treatment or any other treatment of any other patient I have performed during my career. I have been appropriately trained according to the standard of the medical board and have a significant amount of successful treatments/ experience to validate my medical practice decision.

Sincerely,

D. Kayle McCleve PA-C

EXHIBIT 3

EXHIBIT 3

NEVADA STATE BOARD OF MEDICAL EXAMINERS
325 E. Warm Springs Road, Suite 225
Las Vegas, NV 89119

Aury Nagy, M.D.
Board President

Edward O. Cousineau, J.D.
Executive Director

June 5, 2023

Andrew Sheep, M.D.
[redacted]

RE: BME CASE #: [redacted]
PATIENT: [redacted]

Supervising Physician for David McCleve, PA-C

Dear Dr. Sheep:

We have received information and a complaint regarding Mr. McCleve's medical treatment of the above named patient.

It is alleged:

1. David McCleve, PA-C had his hospital privileges suspended by the MEC (Medical Executive Committee) at North Vista Hospital for injecting Botox or a similar substance in a "private patient" in the Hospital without Hospital authorization, patient registration, patient consent, or documentation of Mr. McCleve's competency.

It is further alleged:

2. 3. Complications arose and the patient suffered an adverse outcome and had to be treated at a higher level.

3. Therefore, you may be failing to supervise Mr. McCleve adequately and appropriately.

Please provide a response to the following questions:

1. Please describe your duties as supervising physician to Mr. McCleve, PA-C.

2. Please provide a response regarding the care Mr. McCleve provided to the patient as described above.

In order to determine whether or not there has been a violation of the Nevada Medical Practice Act, Nevada Revised Statutes, Chapters 629 and 630, and Nevada Administrative Code, Chapters 629 and 630 (NMPA), **please provide a written response to each question noted above.** Please include any further

information you believe would be useful for the Board to make a determination in this matter. **Please reply to this request within 30 calendar days.**

The Nevada State Board of Medical Examiners investigates all information received concerning possible violations of the NMPA. We make no determination as to whether or not there has been a violation of the NMPA until a thorough investigation is completed.

Please be advised that if the particular allegations referenced above did occur, and depending on the facts and circumstances, then you may have violated the NMPA, specifically including but not limited to: NRS 630.301(4), NRS 630.304(2), NAC 630.040, NRS 630.306(1)(2)(b) & NAC 630.230(1)(i)

Respectfully,

Don Andreas
Sr. Investigator
Las Vegas Office

EXHIBIT 4

EXHIBIT 4

Donald A. Andreas

From: Andy Sheep <[redacted]
Sent: Wednesday, June 14, 2023 10:57 AM
To: Donald A. Andreas
Subject: Re: FW: Scanned from a Xerox multifunction device

WARNING - This email originated from outside the State of Nevada. Exercise caution when opening attachments or clicking links, especially from unknown senders.

Yes Sir.

1) I entered into a supervisory relationship with Kayle McCleve PA on Mar 12th 2021, to supervise his care at MyShape Lipo. I was his supervising physician until October 1st, 2021. I had been told about an investigation into my care at Vida Spa, and my attorney, Mr Crane Pomeranz, advised I end all involvement with aesthetic medicine. I submitted a resignation to Trevor Schmidt, PA, at MyShape, to end at October 1st, 2021. Mr McCleve's supervising physician as of October 1st, 2021 onwards was Dr Schon Roberts. This can be confirmed by Mr McCleve, Mr Schmidt, and/or Dr Roberts.

I was unaware at the time that a PA could have multiple supervising physicians on record with the Board. I assumed at the time that when he signed a supervising physician agreement w/ Dr Roberts, I would no longer be his supervising physician on record. In retrospect I should have contacted the Board to terminate the supervisory agreement.

2) I have no knowledge of Mr McCleve's care regarding the above complaint, as I no longer had a professional relationship with him from Oct 1st, 2021 onwards.

V/R,
Andrew Sheep MD
[redacted]

On Wed, Jun 14, 2023 at 10:07 AM Donald A. Andreas <dandreas@medboard.nv.gov> wrote:

> You can email me. Thanks,
>
> Sr. Investigator
>
> 325 E. Warm Springs Road #225
>
> Las Vegas, NV 89119
>
> 702-486-3338
>
> 702-486-33301 Fax

From: Andy Sheep <[redacted]
Sent: Wednesday, June 14, 2023 9:41 AM
To: Donald A. Andreas <dandreas@medboard.nv.gov>
Subject: Re: FW: Scanned from a Xerox multifunction device

WARNING - This email originated from outside the State of Nevada. Exercise caution when opening attachments or clicking links, especially from unknown senders.

Sir,

I had previously both called and mailed the Board to change my address - I will contact the Board again to change it.

With regards to the response, can I email you the response, or does it have to be snail mailed to the Board?

Thank you,

V/R,

Andrew Sheep MD

[redacted]

On Mon, Jun 12, 2023 at 12:08 PM Donald A. Andreas <dandreas@medboard.nv.gov> wrote:

> Dr. Sheep please respond and change your address on the website. Thanks
>
> Sr. Investigator
> 325 E. Warm Springs Road #225
> Las Vegas, NV 89119
> 702-486-3338
> 702-486-33301 Fax
>
> -----Original Message-----
> From: LVCopier@medboard.nv.gov <LVCopier@medboard.nv.gov>
> Sent: Monday, June 12, 2023 11:31 AM

EXHIBIT 5

EXHIBIT 5

NEVADA STATE BOARD OF MEDICAL EXAMINERS

9600 Gateway Drive
Reno, NV 89521

Nick M. Spirtos, M.D., F.A.C.O.G.
Board President

Edward O. Cousineau, J.D.
Executive Director

November 20, 2023

Richard Harris, M.D.
[redacted]

RE: BME CASE # [redacted]
PATIENT: [redacted]

Dear Dr. Harris:

We have received information regarding the medical treatment of the above-named patient by a physician assistant whom you supervised: David McCleve, PA-C

It is alleged:

1. David McCleve, PA-C had his hospital privileges suspended by the MEC (Medical Executive Committee) at North Vista Hospital for injecting Botox or a similar substance in a "private patient: in the Hospital without Hospital authorization, patient registration, patient consent, or documentation of Mr. McCleve's competency.

It is further alleged:

2. Complications arose and the patient suffered an adverse outcome and had to be treated at a higher level.

3. Therefore, you may be failing to supervise Mr. McCleve adequately and appropriately.

Please provide a response to the following questions:

1. Please describe your duties as supervising physician to Mr. McCleve, PA-C.

2. Please provide a response regarding the care Mr. McCleve provided to the patient as described above.

In order to determine whether there has been a violation of the Medical Practice Act, **please provide a written response to the allegations noted above.** Please include any further information you believe would be useful for the Board to make a determination in this matter. **Please reply to this request within (30) days.**

The Nevada State Board of Medical Examiners investigates all information received concerning possible violations of the Nevada Revised Statutes, Chapter 630.

9171 9690 0935 0241 5621 28

We make no determination as to whether or not there has been a violation of the Medical Practice Act, prior to the completion of our investigation. Providing the requested information is deemed a professional obligation of any physician under investigation by the Board and shall not be deemed to be cooperation subject to the whistle-blower protections provided to physicians in NRS 630.364(3).

Please be advised that the particular allegation referenced above, if in fact it did occur, and depending on the facts associated with the situation, could be a violation of the codes, including, but not limited to: NRS 630.301(4), NRS 630.306(1)(b)(2) and NAC 630.040.

Respectfully,

Johnna S. LaRue, CMBI
Deputy Chief of Investigations

EXHIBIT 6

EXHIBIT 6

RECEIVED
JUN 10 2024
NEVADA STATE BOARD OF MEDICAL EXAMINERS

06/07/2024

Nevada State Board of Medical Examiners

9600 gateway drive

Reno, Nevada 89521

Richard Harris, MD

[redacted]

NV Lic #14479

RE: BME case# [redacted]

Patient: [redacted]

Question #1 My duties as a supervising physician to Mr. Mccleave are strictly confined to the supervision of activities granted by the medical staff office of North Vista hospital and do not include activities that are not credentialed by the hospital. It is my understanding that Mr. Mccleave also works outside of the emergency department under the supervision of a different physician and the specifics of those activities have been and continue to not be fully known or disclosed to myself.

Question #2 the above referenced patient was completely unknown to myself and my staff. Pa Mccleave's decision to circumvent the normal process had not been disclosed to me until hours after the incident occurred at which time physician assistant Mccleave was immediately suspended while a thorough investigation was rendered. Shortly afterwards a request was sent to the board requesting that I terminate the relationship between myself, and Mr. Mccleave. It was later brought to my attention that the hospital opted to remove Mr. Mccleave's privileges thus severing the relationship between Superior Emergency Physicians Harris LLC and Mr. Mccleave. The activities of Mr. Mccleave were adequately supervised by our emergency physician medical staff but unfortunately Mr. Mccleave independently made a unilateral decision, in a nontraditional manner, in order to render non credentialed treatment to an unregistered patient using the facilities of North Vista hospital emergency department without authorization.

The conduct of PA Mccleave was immediately addressed upon learning of his unauthorized activities which resulted in the untimely severance of the relationship that existed between SEP, myself and PA Mccleave.

As to the care rendered unto the above patient, immediate emergency medical assistance was properly rendered by my medical staff and the patient was properly disposition to a higher level of care the outcome of which is unknown to myself. Despite being off duty, I personally investigated the incident that day resulting in its ultimate outcome.

I want to thank the board for its patience as I navigated unfamiliar technology in order to answer its questions completely.

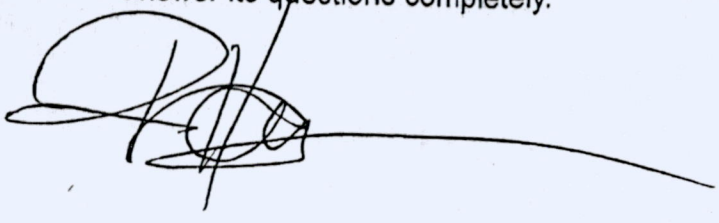


EXHIBIT 7

EXHIBIT 7

Supervisor (Licensee Supervising)	Supervisee (Licensee Being Supervised)	Relationship Type	Date of Association	Date of Disassociation
SHEEP, Andrew Evans	McCLEVE, David Kayle	Additional Supervisor	Mar-16-2021	Jun-27-2023
HARRIS, Richard Wayne	McCLEVE, David Kayle	Additional Supervisor	Feb-02-2017	Apr-17-2023
WASHINGTON, Sherman N/A	McCLEVE, David Kayle	Additional Supervisor	Feb-28-2020	Aug-09-2022
ROBERTS, Schon Colby	McCLEVE, David Kayle	Additional Supervisor	Nov-15-2021	May-23-2022
RAGO, Oscar	McCLEVE, David Kayle	Primary Supervisor	Apr-14-2014	Jan-28-2020
ADAMS, Kenneth W.	McCLEVE, David Kayle	Additional Supervisor	Jan-17-2018	Jan-28-2020
VITKOVITSKY, Irena Vivian	McCLEVE, David Kayle	Additional Supervisor	Nov-05-2018	Sep-06-2019
INGHAM, Maxine Bonnie	McCLEVE, David Kayle	Additional Supervisor	Oct-24-2016	Feb-28-2017

EXHIBIT 8

EXHIBIT 8

MEDICAL RECORDS

This exhibit contains personal medical information, records of a patient or other personal identifying information that is confidential and otherwise protected from disclosure to the public pursuant to NRS 622.310.

EXHIBIT 9

EXHIBIT 9

Curriculum Vitae

Stephanie Elmquist, BS, MPA, PA-C

Physician Assistant Certified

[redacted]

Professional Education

Masters in Physician Assistant August 2005
Loma Linda University
Loma Linda, Ca

Certification Physician Assistant Preparatory Program 2002
Mount San Antonio Community College
Walnut, Ca

Pre-Professional Education

Bachelors of Science in Biology May 2002
University of Nevada, Reno
Reno, Nv

Certification and Licensure

- Physician Assistant Certified, NCCPA 2005- current
- Nevada State Board of Medical Examiners Physician Assistant License 2006- current
- Nevada State Board of Pharmacy 2006- current
- Advanced Cardiac Life Support 2004- current

Employment History

Physician Assistant
Carson Tahoe Regional Medical Center Emergency Room 2013- current
Carson Tahoe Emergency Physicians
Duties: Obtaining patient history, performing physical exams, diagnosing and treating patients

Physician Assistant
Carson Tahoe Regional Medical Center Urgent Care Centers 2012- 2014
Duties: Obtaining patient history, performing physical exams, diagnosing and treating patients

Physician Assistant Advisory Committee Member
Nevada State Board of Medical Examiners 2012-2015
Duties: Participation in quarterly board meetings, proposal of revisions and addendum to current laws and regulations governing Physician Assistants in the state of Nevada, meeting and interaction with both National and State Physician Assistant organizations.

Physician Assistant/ Site Clinical Director
Nevada Health Centers 2009-2013
Sierra Nevada Health Center
Duties: Site clinical director 2011-2013, participation in clinic design and development with grant funding, participation in quality control committee, preparation and presentation of staff meetings, preceptor for Medical Students and Physician Assistant Students, performing clinical duties of a Physician Assistant.

Physician Assistant
Med Direct Urgent Care 2006-2012
Duties: Obtaining patient history, performing physical exams, diagnosing and treating patients. Was also floated to Carson City Health and Human Services Public Health clinic weekly to perform family planning and women health exams as well as STD testing and education.

EXHIBIT 10

EXHIBIT 10

Donald A. Andreas

From: Sarah A. Bradley
Sent: Friday, March 17, 2023 3:43 PM
To: [redacted]
Cc: Ernesto Diaz
Subject: RE: Medispa Question from PA McCleve

Dear Mr. McCleve:

Mr. Diaz forwarded your questions to me for response.

It is my understanding that the Centers for Disease Control and the manufacturers of Botox both recommend that Botox vials be used on a single patient. Therefore, if this question were to be posed to the Nevada State Board of Medical Examiners (Board), they would likely conclude that the standard of care for use of Botox is to use one vial on a single patient. Failure to adhere with the appropriate standard of care when treating a patient would be grounds for possible disciplinary action.

The Board's law and regulations (Nevada Revised Statutes Chapter 630 and Nevada Administrative Code Chapter 630) provide no guidance on this issue. However, the prescribing and dispensing of dangerous drugs and controlled substances in Nevada is governed by the Nevada State Board of Pharmacy and that Board may have more specific direction to provide on this topic. To contact the Nevada State Board of Pharmacy, please go to https://bop.nv.gov/contact/Contact_Us/.

I thought it also might be useful to provide you with other additional provisions if they are helpful.

NRS 454.217 Authority to inject neuromodulator derived from Clostridium botulinum.

1. A person shall not inject a neuromodulator that is derived from Clostridium botulinum or is biosimilar to or the bioequivalent of such a neuromodulator:

(a) Unless the person is:

(1) A physician or physician assistant licensed pursuant to chapter 630 of NRS;

(2) A dentist who has successfully completed the training prescribed by the Board of Dental Examiners of Nevada pursuant to NRS 631.391;

(3) A registered nurse or advanced practice registered nurse;

(4) A physician or physician assistant licensed pursuant to chapter 633 of NRS; or

(5) A podiatric physician who has successfully completed the training prescribed by the State Board of Podiatry pursuant to NRS 635.086.

(b) Outside his or her scope of practice.

(c) At a location other than a medical facility, as defined in NRS 449.0151, or the office of a physician or physician assistant licensed pursuant to chapter 630 or 633 of NRS, dentist, advanced practice registered nurse or podiatric physician.

2. A person who is authorized by subsection 1 to inject a neuromodulator described in that subsection shall not delegate such injection to a person who is prohibited by subsection 1 from injecting such a neuromodulator.

(Added to NRS by 2017, 1249)

NRS 629.086 Conditions and limitations on injection of dermal or soft tissue fillers.

1. A person shall not inject dermal or soft tissue fillers:

(a) Unless the person is:

(1) A physician or physician assistant licensed pursuant to chapter 630 of NRS;

(2) A dentist who has successfully completed the training prescribed by the Board of Dental Examiners of Nevada pursuant to NRS 631.391;

(3) A registered nurse or advanced practice registered nurse;

(4) A physician or physician assistant licensed pursuant to chapter 633 of NRS; or

(5) A podiatric physician who has successfully completed the training prescribed by the State Board of Podiatry pursuant to NRS 635.086.

(b) Outside his or her scope of practice.

(c) At a location other than a medical facility or the office of a physician or physician assistant licensed pursuant to chapter 630 or 633 of NRS, dentist, advanced practice registered nurse or podiatric physician.

2. A person who is authorized by subsection 1 to inject dermal or soft tissue fillers shall not delegate such injection to a person who is prohibited by subsection 1 from injecting dermal or soft tissue fillers.

3. A person who violates any provision of this section is guilty of a misdemeanor.

4. As used in this section, "dermal or soft tissue filler" means a material that is injected into the skin to fill in wrinkles or into the soft tissue to alter the contour of the soft tissue.

Under both NRS 454.217 and NRS 629.086, even if a person is authorized under (1)(a) to inject Botox or dermal or soft tissue fillers, they are prohibited from doing so if it is outside their scope of practice. Additionally, it is grounds for discipline if a licensee practices beyond the scope permitted by law or performs services which they know or should know they are not competent to perform, or which are beyond the scope of his or her training. *See* NRS 630.306.

Generally, the Board considers it to be within the scope if the licensee is certified by a specialty board of the American Board of Medical Specialties. In the case of Botox and injection of dermal or soft tissue fillers, relevant training and certification may include specialties like board certified plastic surgeon, otolaryngology with head and neck surgery, cosmetic surgeon, dermatologist or other formal training which would be at a certification and master level training.

Additionally, a physician assistant must comply with the provisions of NAC 630.360 which require a PA only provide medical services commensurate with their education, training, experience and level of competence and within the scope of practice of their supervising provision.

I hope this information helps. Please contact me if you have any other questions.

Sincerely,

Sarah A. Bradley, J.D., MBA

EXHIBIT 11

EXHIBIT 11

NOTIFICATION TO NEVADA STATE BOARD OF MEDICAL EXAMINERS OF SUPERVISION OF PHYSICIAN ASSISTANT

STATE OF NEVADA)
) ss.
COUNTY OF)

NOTE: NO FEE REQUIRED

***COMES NOW*_____, M.D., being first duly sworn, who deposes and says that:** I, the undersigned **physician**, am duly licensed to practice medicine in the state of Nevada by the Nevada State Board of Medical Examiners (Board), possess an active license to practice medicine in the state of Nevada, License Number_____, and am in good standing with the Board. I am engaged in the practice of medicine in the state of Nevada, am current on all my required CME and am not aware of any disciplinary action, formal or informal; pending against me by the Board or any other jurisdiction's medical licensing entity. **I have checked with the Board and determined that the physician assistant I am going to supervise has never been formally disciplined by the Nevada State Board of Medical Examiners.**

I have read and am aware of the provisions of Chapter 630 of the Nevada Revised Statutes concerning the duties of a supervising physician, as well as Chapter 630 of the Nevada Administrative Code, which are the regulations adopted by the Board concerning a physician's relationship with a physician assistant and/or advanced practitioner of nursing. I have read and am aware of the regulation of the Nevada State Board of Medical Examiners under Chapter 630 of the Nevada Administrative Code that precludes a physician from simultaneously supervising more than three physician assistants or collaborating with more than three advanced practitioners of nursing, or with a combination of more than three physician assistants and advanced practitioners of nursing, without first filing a petition with the Board for approval to supervise more, and the requirement that I prove to the satisfaction of the Board that the circumstances of my practice necessitate more and that I will be able to supervise/collaborate with the greater number in a satisfactory manner.

I hereby certify that this relationship does not violate the limitation cited above concerning the total number of physician assistants or advanced practitioners of nursing with whom I may simultaneously supervise or collaborate. The supervision of medical services of a physician assistant by a supervising physician, may include, without limitation, supervision that is performed electronically, telephonically or by fiber optics from within or outside this State or the United States. A physician assistant's use of equipment may include the transfer of information concerning the medical condition of a patient in this State electronically, telephonically or by fiber optics from within or outside this State or the United States. **Further, this relationship will not begin until I am in receipt of a file-stamped copy of this Notification bearing the receipt stamp of the Board thereon.** Upon receipt of same, I will be supervising the following named physician assistant at the following practice location(s):

_____

_____

_____

_____ _____
Name of Physician Assistant License # Practice Location(s) AND Telephone No. (use extra page if necessary)

I am aware that the **original** copy of this Notification will be placed in my licensing file at the offices of the Board, and that I must immediately notify the board, in writing, of the termination of this relationship.

WHEREFORE, I set my hand this_____day of_____, 20____.

_____ _____
Supervising Physician's Name (Print or Type) Supervising Physician's Signature

---

***COMES NOW*_____, P.A., being first duly sworn, who deposes and says that:** I, the undersigned **physician assistant**, have read and am aware of the provisions of Chapter 630 of the Nevada Revised Statutes and the Nevada Administrative Code as those laws apply to physician assistants. I am aware that if this agreement is executed prior to the issuance of my license it will be pending until such time my license is issued, and will not begin until I am in receipt of a file-stamped copy of this Notification bearing the receipt stamp of the Board thereon. Further, a copy of this Notification will be placed in my licensing file at the offices of the Board, and, that the provisions of the Nevada Administrative Code require that if this relationship is terminated, my failure to immediately notify the Board of the termination or my continuing to practice this portion of my practice until such time as I advise the Board of my new supervising physician is grounds for disciplinary action against me. In accordance with **NAC 630.360(4), a physician assistant shall notify the Board in writing within 72 hours after any change relating to his supervising physician.**

WHEREFORE, I set my hand this_____day of_____, 20_____.

_____ _____
Physician Assistant's Name (Print or Type) Physician Assistant's Signature

---

The above-named_____,
Physician's Name (Print)

being first duly sworn, appeared before me on the_____day of_____, 20____, and **in my presence,**

executed this document consisting of one (1) page.

_____
Notary Public

The above-named_____,
Physician Assistant's Name (Print)

being first duly sworn, appeared before me on the_____day _____, 20____, and **in my presence,**

executed this document consisting one (1) page.

_____
Notary Public

Completed original form is to be mailed directly to:
Nevada State Board of Medical Examiners
9600 Gateway Drive
Reno, NV 89521

NAC 630.370 Supervising physician: Duties; qualifications. (NRS 630.130, 630.275)

1. Except as otherwise provided in NAC 630.375, the supervising physician is responsible for all the medical activities of his or her physician assistant and shall ensure that:

(a) The physician assistant is clearly identified to the patients as a physician assistant;

(b) The physician assistant performs only those medical services which have been approved by his or her supervising physician;

(c) The physician assistant does not represent himself or herself in any manner which would tend to mislead the general public, the patients of the supervising physician or any other health professional; and

(d) There is strict compliance with:

(1) The provisions of the certificate of registration issued to his or her physician assistant by the State Board of Pharmacy pursuant to NRS 639.1373; and

(2) The regulations of the State Board of Pharmacy regarding controlled substances, poisons, dangerous drugs or devices.

2. Except as otherwise required in subsection 3 or 4, the supervising physician shall review and initial selected charts of the patients of the physician assistant. Unless the physician assistant is performing medical services pursuant to NAC 630.375, the supervising physician must be available at all times that his or her physician assistant is performing medical services to consult with his or her assistant. Those consultations may be indirect, including, without limitation, by telephone.

3. At least once a month, the supervising physician shall spend part of a day at any location where the physician assistant provides medical services to act as a consultant to the physician assistant and to monitor the quality of care provided by the physician assistant.

4. Except as otherwise provided in this subsection, if the supervising physician is unable to supervise the physician assistant as required by this section, the supervising physician shall designate a qualified substitute physician, who practices medicine in the same specialty as the supervising physician, to supervise the assistant. If the physician assistant is performing medical services pursuant to NAC 630.375, the supervising physician is not required to comply with this subsection.

5. A physician who supervises a physician assistant shall develop and carry out a program to ensure the quality of care provided by a physician assistant. The program must include, without limitation:

(a) An assessment of the medical competency of the physician assistant;

(b) A review and initialing of selected charts;

(c) An assessment of a representative sample of the referrals or consultations made by the physician assistant with other health professionals as required by the condition of the patient;

(d) Direct observation of the ability of the physician assistant to take a medical history from and perform an examination of patients representative of those cared for by the physician assistant; and

(e) Maintenance by the supervising physician of accurate records and documentation regarding the program for each physician assistant supervised.

6. Except as otherwise provided in subsection 7, a physician may supervise a physician assistant if the physician:

(a) Holds an active license in good standing to practice medicine issued by the Board;

(b) Actually practices medicine in this State; and

(c) Has not been specifically prohibited by the Board from acting as a supervising physician.

7. If the Board has disciplined a physician assistant pursuant to NAC 630.410, a physician shall not supervise that physician assistant unless the physician has been specifically approved by the Board to act as the supervising physician of that physician assistant.

[Bd. of Medical Exam'rs, § 630.370, eff. 12-20-79] — (NAC A 6-23-86; 11-21-88; 9-12-91; 1-13-94; R149-97, 3-30-98; R108-01, 11-29-2001; R145-03, 12-16-2003; R005-07, 10-31-2007)

NAC 630.360 Performance of authorized medical services; identification; misrepresentation; notification of change regarding supervising physician. (NRS 630.130, 630.275)

1. The medical services which a physician assistant is authorized to perform must be:

(a) Commensurate with the education, training, experience and level of competence of the physician assistant; and

(b) Within the scope of the practice of the supervising physician of the physician assistant.

2. The physician assistant shall wear at all times while on duty a placard, plate or insigne which identifies him or her as a physician assistant.

3. No physician assistant may represent himself or herself in any manner which would tend to mislead the general public or the patients of the supervising physician.

4. Except as otherwise provided in subsection 3 of NAC 630.340, a physician assistant shall notify the Board in writing within 72 hours after any change in the supervision of the physician assistant by a supervising physician.

[Bd. of Medical Exam'rs, § 630.360, eff. 12-20-79] — (NAC A 6-23-86; 9-12-91; 1-13-94; R149-97, 3-30-98; R108-01, 11-29-2001; R183-12, 4-5-2013)

EXHIBIT 12

EXHIBIT 12

PA 42281 MD 50678

NOTIFICATION TO NEVADA STATE BOARD OF MEDICAL EXAMINERS OF SUPERVISION OF PHYSICIAN ASSISTANT

RECEIVED
MAR 15 2021
NEVADA STATE BOARD OF MEDICAL EXAMINERS

STATE OF NEVADA)
) ss.
COUNTY OF Clark)

NOTE: NO FEE REQUIRED

COMES NOW ANDREW SHEEP, **M.D., being first duly sworn, who deposes and says that:** I, the undersigned **physician**, am duly licensed to practice medicine in the state of Nevada by the Nevada State Board of Medical Examiners (Board), possess an active license to practice medicine in the state of Nevada, License Number 19148, and am in good standing with the Board. I am engaged in the practice of medicine in the state of Nevada, am current on all my required CME and am not aware of any disciplinary action, formal or informal; pending against me by the Board or any other jurisdiction's medical licensing entity. **I have checked with the Board and determined that the physician assistant I am going to supervise has never been formally disciplined by the Nevada State Board of Medical Examiners.**

I have read and am aware of the provisions of Chapter 630 of the Nevada Revised Statutes concerning the duties of a supervising physician, as well as Chapter 630 of the Nevada Administrative Code, which are the regulations adopted by the Board concerning a physician's relationship with a physician assistant and/or advanced practitioner of nursing. I have read and am aware of the regulation of the Nevada State Board of Medical Examiners under Chapter 630 of the Nevada Administrative Code that precludes a physician from simultaneously supervising more than three physician assistants or collaborating with more than three advanced practitioners of nursing, or with a combination of more than three physician assistants and advanced practitioners of nursing, without first filing a petition with the Board for approval to supervise more, and the requirement that I prove to the satisfaction of the Board that the circumstances of my practice necessitate more and that I will be able to supervise/collaborate with the greater number in a satisfactory manner.

CONFIRMATION COPY

I hereby certify that this relationship does not violate the limitation cited above concerning the total number of physician assistants or advanced practitioners of nursing with whom I may simultaneously supervise or collaborate. The supervision of medical services of a physician assistant by a supervising physician, may include, without limitation, supervision that is performed electronically, telephonically or by fiber optics from within or outside this State or the United States. A physician assistant's use of equipment may include the transfer of information concerning the medical condition of a patient in this State electronically, telephonically or by fiber optics from within or outside this State or the United States. **Further, this relationship will not begin until I am in receipt of a file-stamped copy of this Notification bearing the receipt stamp of the Board thereon.** Upon receipt of same, I will be supervising the following named physician assistant at the following practice location(s):

DAVID K. McCLEVE
Name of Physician Assistant

[redacted]
Practice Location(s) AND Telephone No. (use extra page if necessary)

I am aware that the **original** copy of this Notification will be placed in my licensing file at the offices of the Board, and that I must immediately notify the board, in writing, of the termination of this relationship.

WHEREFORE, I set my hand this 12th day of March, 2021.

ANDREW SHEEP
Supervising Physician's Name (Print or Type)

Supervising Physician's Signature

COMES NOW DAVID K. McCLEVE, **P.A., being first duly sworn, who deposes and says that:** I, the undersigned **physician assistant**, have read and am aware of the provisions of Chapter 630 of the Nevada Revised Statutes and the Nevada Administrative Code as those laws apply to physician assistants. I am aware that a copy of this Notification will be placed in my licensing file at the offices of the Board, and, that the provisions of the Nevada Administrative Code require that if this relationship is terminated, my failure to immediately notify the Board of the termination or my continuing to practice this portion of my practice until such time as I advise the Board of my new supervising physician is grounds for disciplinary action against me. In accordance with **NAC 630.360(4), a physician assistant shall notify the Board in writing within 72 hours after any change relating to his supervising physician.**

WHEREFORE, I set my hand this 12 day of March, 2021.

DAVID K. McCLEVE
Physician Assistant's Name (Print or Type)

Physician Assistant's Signature

The above-named ANDREW SHEEP,
Physician's Name (Print)

being first duly sworn, appeared before me on the 12th day of March, 2021, and **in my presence,** executed this document consisting of one (1) page.

Notary Public

CHRISTOPHER KUH
Notary Public - State of Nevada
County of Clark
APPT. NO. 13-10733-1
My App. Expires April 22, 2021

The above-named David McClene,
Physician Assistant's Name (Print)

being first duly sworn, appeared before me on the 12th day of March, 2021, and **in my presence,** executed this document consisting one (1) page.

Notary Public

CHRISTOPHER KUH
Notary Public - State of Nevada
County of Clark
APPT. NO. 13-10733-1
My App. Expires April 22, 2021

Completed original form is to be submitted directly to: Nevada State Board of Medical Examiners, 9600 Gateway Drive, Reno, NV 89521

RECEIVED
JUN 26 2023
NEVADA STATE BOARD OF MEDICAL EXAMINERS

NOTICE OF TERMINATION OF SUPERVISING / COLLABORATING AGREEMENT

CONFIRMATION COPY

To: The Nevada State Board of Medical Examiners
Attn: Licensing
9600 Gateway Drive
Reno, NV 89521

Please be advised that:

David McCleve, PA-C or APRN, License No. PA1526, and
(Please Print)

Andrew Sheep, M.D., License No. 19148,
(Please Print)

terminated their supervising and/or collaborating agreement as of 6/14/2023.
(Date)

Print Name: Andrew Sheep

Signature: _____ Date: 6/14/2023
(Physician Assistant or Medical Doctor Licensee **Only**)

NOTE:

Per NAC 630.360(4), a physician assistant shall notify the Board in writing within 72 hours after any change relating to his supervising physician.

Per NAC 630.490(5), a collaborating physician shall immediately notify the Board of the termination of collaboration between the collaborating physician and an advanced practice registered nurse.

Please complete and send this form to:

Nevada State Board of Medical Examiners
Attn: Licensing
9600 Gateway Drive, Reno, NV 89521
Fax: 775-688-2551
Email: nsbme@medboard.nv.gov

6

BEFORE THE BOARD OF MEDICAL EXAMINERS
OF THE STATE OF NEVADA

* * * * *

In the Matter of Charges and Complaint Against: **DAVID KAYLE McCLEVE, PA-C** **Respondent.**	**Case No. 24-42281-1**

FILED
DEC - 9 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

PROOF OF SERVICE

I, Valerie Jenkins, Legal Assistant for the Nevada State Board of Medical Examiners, hereby certify that on November 22, 2024, I sent the **COMPLAINT** and **PATIENT DESIGNATION**, as well as required fingerprinting card with instructions to:

DAVID KAYLE McCLEVE, PA-C
[redacted]

via USPS Certified Mail Tracking number 9171969009350255700691, and was delivered on December 6, 2024. *See* **Exhibit 1**.

DATED this 9th day of December, 2024.

Valerie Jenkins

VALERIE JENKINS
Legal Assistant
Nevada State Board of Medical Examiners
9600 Gateway Drive
Reno, Nevada 89521

EXHIBIT 1

EXHIBIT 1

UNITED STATES POSTAL SERVICE

December 9, 2024

Dear Valerie Jenkins:

The following is in response to your request for proof of delivery on your item with the tracking number: **9171 9690 0935 0255 7006 91**.

Item Details

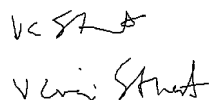
Status:	Delivered, Individual Picked Up at Post Office
Status Date / Time:	December 6, 2024, 12:54 pm
Location:	HOLBROOK, AZ 86025
Postal Product:	First-Class Mail®
Extra Services:	Certified Mail™
	Return Receipt Electronic

Shipment Details

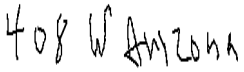
Weight:	0.7oz

Recipient Signature

Signature of Recipient:



Address of Recipient:



Note: Scanned image may reflect a different destination address due to Intended Recipient's delivery instructions on file.

Thank you for selecting the United States Postal Service® for your mailing needs. If you require additional assistance, please contact your local Post Office™ or a Postal representative at 1-800-222-1811.

Sincerely,
United States Postal Service®
475 L'Enfant Plaza SW
Washington, D.C. 20260-0004

ALERT: EFFECTIVE NOVEMBER 29, 2024, INTERNATIONAL MAIL SERVICE TO CANADA IS TEM...

USPS Tracking®

FAQs >

Remove ×

Tracking Number:

9171969009350255700691

Copy Add to Informed Delivery (https://informeddelivery.usps.com/)

Latest Update

Your item was picked up at the post office at 12:54 pm on December 6, 2024 in HOLBROOK, AZ 86025.

Get More Out of USPS Tracking:

USPS Tracking Plus®

Feedback

Delivered

Delivered, Individual Picked Up at Post Office
HOLBROOK, AZ 86025
December 6, 2024, 12:54 pm

Reminder to Schedule Redelivery of your item
December 2, 2024

Available for Redelivery or Pickup
HOLBROOK
100 W ERIE ST
HOLBROOK AZ 86025-9998
M-F 0830-1600; SAT 0830-1200
November 29, 2024, 12:30 pm

Notice Left (No Authorized Recipient Available)
HOLBROOK, AZ 86025
November 27, 2024, 9:51 am

Out for Delivery
HOLBROOK, AZ 86025

November 27, 2024, 8:12 am

Arrived at Post Office
HOLBROOK, AZ 86025
November 27, 2024, 8:01 am

In Transit to Next Facility
November 26, 2024

Arrived at USPS Regional Origin Facility
RENO NV DISTRIBUTION CENTER
November 22, 2024, 10:03 pm

Accepted at USPS Origin Facility
RENO, NV 89521
November 22, 2024, 8:48 pm

Hide Tracking History

What Do USPS Tracking Statuses Mean? (https://faq.usps.com/s/article/Where-is-my-package)

Text & Email Updates

Return Receipt Electronic

USPS Tracking Plus®

Product Information

See Less

Track Another Package

Enter tracking or barcode numbers

Need More Help?

Contact USPS Tracking support for further assistance.

BEFORE THE BOARD OF MEDICAL EXAMINERS
OF THE STATE OF NEVADA

* * * * *

In the Matter of Charges and Complaint Against: **DAVID KAYLE McCLEVE, PA-C** **Respondent.**	**Case No. 24-42281-1**

FILED
JAN - 8 2025
NEVADA STATE BOARD OF MEDICAL EXAMINERS
By:

PROOF OF SERVICE

I, Valerie Jenkins, Legal Assistant for the Nevada State Board of Medical Examiners, hereby certify that on January 3, 2025, I sent the **COMPLAINT** and **PATIENT DESIGNATION**, as well as required fingerprinting card with instructions to:

DAVID KAYLE McCLEVE, PA-C
[redacted]

via USPS Certified Mail Tracking number 9171969009350254609414, and was delivered on January 6, 2025. *See* **Exhibit 1**.

DATED this 8th day of January, 2025.

Valerie Jenkins
VALERIE JENKINS
Legal Assistant
Nevada State Board of Medical Examiners
9600 Gateway Drive
Reno, Nevada 89521

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

EXHIBIT 1

EXHIBIT 1

UNITED STATES POSTAL SERVICE

January 8, 2025

Dear Valerie Jenkins:

The following is in response to your request for proof of delivery on your item with the tracking number: **9171 9690 0935 0254 6094 14**.

Item Details

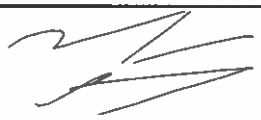
Status:	Delivered, Left with Individual
Status Date / Time:	January 6, 2025, 2:27 pm
Location:	LAS VEGAS, NV 89148
Postal Product:	First-Class Mail®
Extra Services:	Certified Mail™
	Return Receipt Electronic

Shipment Details

Weight:	0.7oz

Recipient Signature

Signature of Recipient:



Address of Recipient:



Note: Scanned image may reflect a different destination address due to Intended Recipient's delivery instructions on file

Thank you for selecting the United States Postal Service® for your mailing needs. If you require additional assistance, please contact your local Post Office™ or a Postal representative at 1-800-222-1811.

Sincerely,
United States Postal Service®
475 L'Enfant Plaza SW
Washington, D.C. 20260-0004

ALERT: SEVERE WEATHER AND EMERGENCY EVENTS ACROSS THE U.S. MAY DELAY FINAL D...

USPS Tracking®

FAQs >

Remove ×

Tracking Number:

9171969009350254609414

Copy Add to Informed Delivery (https://informeddelivery.usps.com/)

Latest Update

Your item was delivered to an individual at the address at 2:27 pm on January 6, 2025 in LAS VEGAS, NV 89148.

Get More Out of USPS Tracking:

USPS Tracking Plus®

Feedback

Delivered

Delivered, Left with Individual
LAS VEGAS, NV 89148
January 6, 2025, 2:27 pm

In Transit to Next Facility
January 5, 2025

Arrived at USPS Regional Facility
LAS VEGAS NV DISTRIBUTION CENTER
January 4, 2025, 3:05 pm

Arrived at USPS Regional Origin Facility
RENO NV DISTRIBUTION CENTER
January 4, 2025, 12:24 am

USPS in possession of item
RENO, NV 89511
January 3, 2025, 6:30 pm

Hide Tracking History

What Do USPS Tracking Statuses Mean? (https://faq.usps.com/s/article/Where-is-my-package)

Text & Email Updates

Select what types of updates you'd like to receive and how. Send me a notification for:

Text	Email	
☐	☐	All Below Updates
☐	☐	Expected Delivery Updates ⓘ
☐	☐	Day of Delivery Updates ⓘ
☐	☐	Package Delivered ⓘ
☐	☐	Available for Pickup ⓘ
☐	☐	Delivery Exception Updates ⓘ
☐	☐	Package In-Transit Updates ⓘ

Return Receipt Electronic

Confirmation

Your Proof of Delivery record is complete and will be processed shortly.

Your confirmation will be sent to the following:

vjenkins@medboard.nv.gov

USPS Tracking Plus®

Product Information

See Less

Track Another Package

Enter tracking or barcode numbers

Need More Help?

Contact USPS Tracking support for further assistance.

FAQs

FILED

JAN 29 2025

NEVADA STATE BOARD OF MEDICAL EXAMINERS

By:

LIPSON NEILSON P.C.
LISA J. ZASTROW, ESQ.
Nevada Bar No. 9727
9900 Covington Cross Drive, Suite 120
Las Vegas, Nevada 89144
Phone: (702) 382-1500
Fax: (702) 382-1512
lzastrow@lipsonneilson.com

Attorneys for Respondent

BEFORE THE BOARD OF MEDICAL EXAMINERS

OF THE STATE OF NEVADA

***

In the Matter of Charges and Complaint Against:	**Case No. 24-42281-1**
DAVID KAYLE McCLEVE, P.A.-C	**ANSWER**
Respondent	

Respondent, DAVID KAYLE MCCLEVE, P.A. ("McCleve" or "Respondent"), by and through his attorney, Lisa J. Zastrow of Lipson Neilson P.C., hereby responds to the Complaint as follows:

GENERAL STATEMENT RELATING TO THE COMPLAINT

To the extent this Answer contains any alleged ambiguity, Respondent denies any and all allegations relating to malpractice, insufficient record keeping, violations of the standards of practice and practicing beyond the scope of his license. Additionally, this Answer is not intended to detail each and every fact supporting McCleve's Defenses.

With respect to the specific allegations, Respondent asserts as follows:

1. Admit.
2. McCleve is without information sufficient to form a basis to admit the truth of this allegation.
3. McCleve is without information sufficient to form a basis to admit the truth of this allegation.

LIPSON NEILSON P.C.
9900 Covington Cross Drive, Suite 120, Las Vegas, Nevada 89144
Telephone: (702) 382-1500 Facsimile: (702) 382-1512

LIPSON NEILSON P.C.
9900 Covington Cross Drive, Suite 120, Las Vegas, Nevada 89144
Telephone: (702) 382-1500 Facsimile: (702) 382-1512

4. McCleve is without information sufficient to form a basis to admit the truth of this allegation.
5. McCleve is without information sufficient to form a basis to admit the truth of this allegation.
6. McCleve is without information sufficient to form a basis to admit the truth of this allegation.
7. McCleve is without information sufficient to form a basis to admit the truth of this allegation

COUNT I

NRS 630.301(4) - Malpractice

8. Respondent repeats and realleges his responses as articulated at paragraphs 1 through 7 as though fully set forth herein.
9. The allegation herein sets forth only a portion of NRS 630.301(4), which states fully that disciplinary action may be imposed for malpractice "but only if the malpractice is established by a preponderance of the evidence."
10. This is an incorrect statement of the regulation in Nevada. NAC 630.040 indicates how malpractice must be interpreted, not defined. As defined by Merriam-Webster's dictionary, "interpreted" means "understood in the light of individual belief, judgment, or circumstances." (citation omitted). This word was chosen carefully by the Nevada legislature insomuch as "malpractice" must be determined based not only on established rules and parameters, but through a review of the Respondents understanding, with the support of expert opinions.
11. Deny
12. Deny

COUNT II

NRS 630.3062(1)(a) – Failure to Maintain Appropriate Medical Records

13. Respondent repeats and realleges his responses as articulated at paragraphs 1 through 12 as though fully set forth herein.

14. Respondent denies any failure to obtain appropriate medical records, but admits that this Board has jurisdiction to review matters of discipline.

15. Deny.

16. Deny.

COUNT III

NRS 630.306(1)(b)(2)

17. Respondent repeats and realleges his responses as articulated at paragraphs 1 through 16 as though fully set forth herein.

18. This allegation is an incomplete statement of law; therefore, deny.

19. This allegation is not an exact recitation of NAC630.340(2), but is rather a summary; therefore, deny.

20. Deny.

21. Deny.

COUNT IV
NRS 630.306(1) (e) - Practice Beyond Scope of License

22. Respondent repeats and realleges his responses as articulated at paragraphs 1 through 21 as though fully set forth herein.

23. Respondent denies any allegation that he practiced outside the scope of his license, but admits that this Board has jurisdiction to review this matter. Specifically, NRS 630.06(1)(e) provides for discipline should a practitioner practice outside their scope "***if the licensee knows or has reason to know that he or she is not competent to perform or which are beyond the scope of his or her training.***" *See* NRS 630.306(1)(e).

24. Deny.

25. Deny

WHEREFORE, the Petitioner respectfully prays that this matter be dismissed, that no fees or cost be paid to the Medical Board (or other parties including outside counsel) in relationship to this proceeding and that no sanctions shall be imposed. Respondent reserves the

LIPSON NEILSON P.C.
9900 Covington Cross Drive, Suite 120, Las Vegas, Nevada 89144
Telephone: (702) 382-1500 Facsimile: (702) 382-1512

right to present all affirmative and related defenses authorized by law.

DATED this 29th day of January, 2025.

LIPSON NEILSON P.C.

By: */s/ Lisa J. Zastrow*
LISA J. ZASTROW, ESQ.
Nevada Bar No. 9727
9900 Covington Cross Drive, Suite 120
Las Vegas, Nevada 89144

Attorneys for Respondent

CERTIFICATE OF SERVICE

I certify that on the 29th day of January, 2025, I electronically served the foregoing **ANSWER** to the following parties by email and U.S. Mail to:

INVESTIGATIVE COMMITTEE OF THE NEVADA STATE BOARD OF MEDICAL EXAMINERS DEONNE E. CONTINE General Counsel 9600 Gateway Drive Reno, NV 89521 Tel: (775) 688-2559 Email: dcontine@medboard.nv.gov *Attorney for the Investigative Committee*	

/s/ Nancy Rozan
An Employee of LIPSON NEILSON P.C.

LIPSON NEILSON P.C.
9900 Covington Cross Drive, Suite 120, Las Vegas, Nevada 89144
Telephone: (702) 382-1500 Facsimile: (702) 382-1512

BEFORE THE BOARD OF MEDICAL EXAMINERS
OF THE STATE OF NEVADA

* * * * *

In the Matter of Charges and

Complaint Against

DAVID KAYLE MCCLEVE, P.A.-C,

Respondent.

Case No. 24-42281-1

Early Case Conference Date: February 13, 2025 @ 10:00 a.m.

FILED
FEB - 5 2025
NEVADA STATE BOARD OF MEDICAL EXAMINERS
By:

ORDER SCHEDULING EARLY CASE CONFERENCE

TO: Deonne E. Contine
General Counsel
Nevada State Board of Medical Examiners
9600 Gateway Drive
Reno, Nevada 89521

David Kayle McCleve, P.A.-C
c/o Lisa Zastrow, Esq.
9900 Covington Cross Drive, Ste 120
Las Vegas, NV 89144

NOTICE IS HEREBY GIVEN that, in compliance with NRS 630.339(3), **an Early Case Conference will be conducted on February 13, 2025 beginning at the hour of 10:00 a.m.** The Early Case Conference will be held via conference call. The conference call number is 1-605-475-2200 and the access code is 8792457.[1]

[1] NRS 630.339(3) provides as follows:

> Within 20 days after the filing of the answer, the parties shall hold an early case conference at which the parties and the hearing officer appointed by the Board or a member of the Board must preside. At the early case conference, the parties shall in good faith:
>
> (a) Set the earliest possible hearing date agreeable to the parties and the hearing officer, panel of the Board or the Board, including the estimated duration of the hearing:
>
> (b) Set dates:

The scheduled Early Case Conference shall be attended by the parties in person or by any party's legal counsel of record and will be conducted by the undersigned Hearing Officer to discuss and designate the dates for the Pre-Hearing Conference and Hearing and the other procedural matters established in NRS 630.339. The parties must also provide an estimate, to the nearest hour, of the time required for presentation of their respective cases.

At the Pre-Hearing Conference, in accordance with NAC 630.465,[2] each party shall provide the other party with a copy of the list of witnesses they intend to call to testify, including therewith, the qualifications of each witness so identified and a summary of the testimony of each witness. If a witness is not on the list of witnesses, that witness may subsequently not be allowed to testify at the Hearing unless good cause is shown for omitting the witness from said list.[3] Likewise, all

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(1) By which all documents must be exchanged;
(2) By which all prehearing motions and responses thereto must be filed;
(3) On which to hold the prehearing conference; and
(4) For any other foreseeable actions that may facilitate the timely and fair conduct of the matter.

(c) Discuss or attempt to resolve all or any portion of the evidentiary or legal issues in the matter;
(d) Discuss the potential for settlement of the matter on terms agreeable to the parties; and
(e) Discuss and deliberate any other issues that may facilitate the timely and fair conduct of the matter.

[2] NAC 630.465 provides as follows:

1. At least 30 days before a hearing but not earlier than 30 days after the date of service upon the physician or physician assistant of a formal complaint that has been filed with the Board pursuant to NRS 630.311, unless a different time is agreed to by the parties, the presiding member of the Board or panel of members of the Board or the hearing officer shall conduct a prehearing conference with the parties and their attorneys. All documents presented at the prehearing conference are not evidence, are not part of the record and may not be filed with the Board.

2. Each party shall provide to every other party a copy of the list of proposed witnesses and their qualifications and a summary of the testimony of each proposed witness. A witness whose name does not appear on the list of proposed witnesses may not testify at the hearing unless good cause is shown.

3. All evidence, except rebuttal evidence, which is not provided to each party at the prehearing conference may not be introduced or admitted at the hearing unless good cause is shown.

4. Each party shall submit to the presiding member of the Board or panel or to the hearing officer conducting the conference each issue which has been resolved by negotiation or stipulation and an estimate, to the nearest hour, of the time required for presentation of its oral argument.

[3] In identifying a patient as a witness the parties are cautioned to omit from any pleadings filed with undersigned Hearing Officer any addresses, telephone numbers, social security numbers, or other personal information regarding such

evidence, except rebuttal evidence, that is not provided to each party at the Pre-Hearing Conference may also not be introduced or admitted at the Hearing unless good cause is shown.

Counsel for the Nevada State Board of Medical Examiners and the Respondent shall keep undersigned Hearing Officer advised of each issue which has been resolved by negotiation or stipulation, if any.

ACCORDINGLY, NOTICE IS HEREBY GIVEN that the possible sanctions authorized by NRS 630.352 and NRS 622.400 upon a finding of guilt to one or more of the Counts raised in said Board Complaint include the following:

(a) Place Respondent on probation for a specified period on any of the conditions specified in the order;

(b) Administer a written public reprimand to Respondent;

(c) Limit Respondent's practice or exclude one or more specified branches of medicine from his or her practice;

(d) Suspend Respondent's license for a specified period or until further order of the Board;

(e) Revoke Respondent's license;

(f) Require Respondent to participate in a program to correct an alcohol or other substance use disorder or any other impairment;

(g) Require supervision of Respondent's practice;

(h) Impose a fine not to exceed $10,000 for each violation;

(i) Require Respondent to perform community service without compensation;

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individual and to confine their submissions in this regard to the name of the witness, the relevancy of any testimony sought to be elicited from that witness, and a summary of the anticipated testimony.

(j) Require Respondent to take a physical or mental examination or an examination testing his or her competence; and

(k) Require Respondent to fulfill certain training or educational requirements.

(l) Require Respondent pay all costs incurred by the Board relating to this disciplinary proceeding, as more fully set forth in NRS 622.400.

DATED this 5th day of February 2025.

By: _____

Patricia Halstead, Esq.
Hearing Officer
(775) 322-2244

CERTIFICATE OF SERVICE

I certify that on this day, I personally delivered or mailed, postage pre-paid, at Reno, Nevada, a true file-stamped copy of the foregoing ORDER SCHEDULING EARLY CASE CONFERENCE addressed as follows:

Deonne E. Contine
General Counsel
Nevada State Board of Medical Examiners
9600 Gateway Drive
Reno, Nevada 89521

David Kayle McCleve, P.A.-C
c/o Lisa Zastrow, Esq.
9900 Covington Cross Drive, Ste 120
Las Vegas, NV 89144

DATED this 5th day of February 2025.

Valerie Jenkins
Signature

Valerie Jenkins
Print

Legal Assistant
Title

BEFORE THE BOARD OF MEDICAL EXAMINERS
OF THE STATE OF NEVADA

* * * * *

In the Matter of Charges and Complaints Against

DAVID KAYLE MCCLEVE, P.A.-C,

Respondent.

Case No.: 24-42281-1

FILED

FEB 14 2025

NEVADA STATE BOARD OF MEDICAL EXAMINERS

By:

TO: Deonne E. Contine
General Counsel
Nevada State Board of Medical Examiners
9600 Gateway Drive
Reno, Nevada 89521

David Kayle McCleve, P.A.-C
c/o Lisa Zastrow, Esq.
9900 Covington Cross Drive, Ste 120
Las Vegas, NV 89144

SCHEDULING ORDER

In compliance with NAC 630.465, a pre-hearing conference for this matter will be conducted on **May 9, 2025**, beginning at the hour of 10:00 a.m., and will be held via a conference call. Unless directed otherwise prior to the scheduled date and time of the pre-hearing conference, the conference call number will be 1-605-475-2200 and the access code will be 8792457. The parties shall participate in the conference call and the conference will be conducted before the undersigned hearing officer.

By the pre-hearing conference, each party shall provide the other party with a copy of the list of witnesses he or she intends to call to testify, including the witness' qualifications as well as a brief summary of the witness' anticipated testimony. If a witness is not included in the list of witnesses, that witness may not be allowed to testify at the hearing unless good cause is shown. Likewise, all documentation sought to be relied upon at the formal hearing shall be exchanged. If

at the formal hearing any party seeks to rely upon documentation not previously produced as ordered, such documentation will not be permitted unless good cause is shown.

Any and all pre-hearing motions shall be served and submitted to the undersigned hearing officer on or before **May 23, 2025**, and any oppositions or responses thereto shall be served and submitted to the undersigned hearing officer on or before **June 6, 2025**. Any motions submitted prior to the motion deadline will trigger an opposition response time as set forth in NAC 630.460 (ten working days after service).

There currently exists a dispute about the ability of a party to file a reply in support of a motion. If, after consultation amongst the parties, a consensus cannot be reached about the propriety of filing a reply, and either party wishes to have the ability to file a reply and a consensus in favor of doing so has not been reached, such party shall file a concise brief addressing the issue and submit the same to the undersigned hearing officer, after which the opposing party will have ten (10) business days to respond. Undersigned will consider the briefing and issue a ruling, only after which, if a reply is deemed permitted, reply briefing will be considered, the timing of which will be addressed through a supplemental order. Briefing on the issue shall be submitted before or concurrently to the filing of an initial motion. To the extent it may aid the parties, undersigned had been under the impression that replies were no longer permitted based upon an alleged repeal of NAC 630.460 in accordance with the Adopted Regulation of the Board of Medical Examiners LCB File No. 171-20. However, upon review of the Adopted Regulation of the Board of Medical Examiners LCB File No. 171-20 undertaken after the issue was raised during the early case conference, the amended regulations do not appear to address NAC 630.460. Thus, in addition to any other related authorities as may be addressed in the briefing, please address NAC 630.460 and its current applicability or non-applicability, as the case may be.

The formal hearing is hereby scheduled for **July 11, 2025**. The hearing will commence at 8:30 a.m. each day. Unless otherwise determined, counsel for the IC and the undersigned hearing officer shall attend from the Reno office of the Nevada State Board of Medical Examiners, 9600 Gateway Drive, Reno, Nevada 89521. Respondent and Respondent's counsel may attend from the

Reno office or choose to attend from the Las Vegas office of the Nevada State Board of Medical Examiners, 325 E Warm Springs Road, Suite 225, Las Vegas, Nevada 89119. Witnesses for the parties may appear in person from either location. Remote appearance requests for witnesses, if any, must be made in writing by **June 6, 2025** so related logistics can be addressed.

Following the hearings, the undersigned hearing officer will submit to the Board written findings and recommendations pursuant to NRS 622A.300 that, pursuant to NAC 630.470, will include a synopsis of the testimony taken at the hearings as well as a recommendation on the veracity of witnesses if there is conflicting evidence or if credibility of witnesses is a determining factor. Thereafter the Board will render its decisions. NAC 630.470.

Should the parties deem a status conference necessary at any juncture of the proceeding, they shall coordinate at least three proposed dates and times and may jointly email the undersigned hearing officer with the proposed dates and times and request a status conference and state the basis for the request.

Both parties shall keep the undersigned hearing officer apprised of each issue that has been resolved by negotiation or stipulation or of any other change in the status of this case.

DATED this 13th day of February 2024.

By: _____

Patricia Halstead, Esq.
Hearing Officer
(775) 322-2244

CERTIFICATE OF SERVICE

I certify that on this day, I personally delivered or mailed, postage pre-paid, at Reno, Nevada, a true file-stamped copy of the foregoing SCHEDULING ORDER addressed as follows:

Deonne E. Contine
General Counsel
Nevada State Board of Medical Examiners
9600 Gateway Drive
Reno, Nevada 89521

David Kayle McCleve, P.A.-C
c/o Lisa Zastrow, Esq.
9900 Covington Cross Drive, Ste 120
Las Vegas, NV 89144

DATED this 14th day of February 2025.

Valerie Jenkins
Signature

Valerie Jenkins
Print

Legal Assistant
Title

FILED
MAR 18 2025
NEVADA STATE BOARD OF MEDICAL EXAMINERS
By:

GARIN LAW GROUP
LISA J. ZASTROW, ESQ.
Nevada Bar No. 9727
9900 Covington Cross Drive, Suite 210
Las Vegas, Nevada 89144
Phone: (702) 382-1500
Fax: (702) 382-1512
lzastrow@garinlawgroup.com

Attorneys for Respondent

BEFORE THE BOARD OF MEDICAL EXAMINERS

OF THE STATE OF NEVADA

In the Matter of Charges and Complaint Against: DAVID KAYLE McCLEVE, P.A.-C Respondent	**Case No. 24-4228-1** **REQUEST FOR DISCOVERY PURSUANT TO NRS 622A.330**

Pursuant to NRS 622A.330, Respondent submits this request for written discovery as follows:

1. A copy of all documents ***and other evidence*** intended to be presented by the prosecutor in support of the case, including a list of proposed witnesses;
2. The investigative file, not limited to all communications, records, affidavits and reports acquired and created as a part of the investigation of this case.

DATED this 18th day of March, 2025.

GARIN LAW GROUP

By: */s/ Lisa J. Zastrow*
LISA J. ZASTROW, ESQ.
Nevada Bar No. 9727
9900 Covington Cross Drive, Suite 210
Las Vegas, Nevada 89144
lzastrow@garinlawgroup.com

Attorneys for Respondent

GARIN LAW GROUP
9900 Covington Cross Drive, Suite 210, Las Vegas, Nevada 89144
Telephone: (702) 382-1500 Facsimile: (702) 382-1512

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b) and Administrative Order 14-2, I certify that on the 18th day of March, 2025, I electronically served the foregoing **REQUEST FOR DISCOVERY PURSUANT TO NRS 622A.330** to the following parties by email to:

INVESTIGATIVE COMMITTEE OF THE NEVADA STATE BOARD OF MEDICAL EXAMINERS DEONNE E. CONTINE General Counsel 9600 Gateway Drive Reno, NV 89521 Tel: (775) 688-2559 Email: dcontine@medboard.nv.gov *Attorney for the Investigative Committee*	

/s/ Nancy Rozan
An Employee of GARIN LAW GROUP

GARIN LAW GROUP
9900 Covington Cross Drive, Suite 210, Las Vegas, Nevada 89144
Telephone: (702) 382-1500 Facsimile: (702) 382-1512

BEFORE THE BOARD OF MEDICAL EXAMINERS
OF THE STATE OF NEVADA

* * * * *

In the Matter of Charges and Complaint Against: **DAVID KAYLE McCLEVE, PA-C,** **Respondent.**	**Case No. 24-42281-1**

FILED
APR - 7 2025
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

RESPONSE TO RESPONDENT'S WRITTEN DISCOVERY REQUEST

The Investigative Committee (IC) of the Nevada State Board of Medical Examiners (Board) hereby responds to Respondent's Written Discovery Request (Request) filed pursuant to NRS 622A.330.

I. DOCUMENTS INTENDED TO BE USED IN PROSECUTION

In response to Respondent's Request, the IC produces the following documents, hereto attached as **Exhibit 1** to this instant response:

1. NSBME Allegation Letters and Responses from Mr. McCleve, Dr. Sheep, and Dr. Harris;
2. List of Supervising Physicians for Mr. McCleve;
3. North Vista Hospital Medical Records of Patient A;
4. Curriculum Vitae of Stephanie Elmquist, M.D.; and
5. Email from Ms. Bradley to Mr. McCleve RE Medispa Questions, dated March 17, 2023.

The IC reserves the right to amend and supplement its production as required for prosecution of this case and may provide amended or supplemented evidence on or before the prehearing conference pursuant to NAC 630.465.

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II. LIST OF PROPOSED WITNESSES

The IC lists the following witnesses whom it may call at the hearing on the charges in the Complaint against Respondent filed herein:

a. Kory Linn, Chief of Licensing
Nevada State Board of Medical Examiners
9600 Gateway Drive
Reno, NV 89521

Ms. Linn, or her designee, is expected to verify documentary evidence obtained during the investigation of this case and testify regarding the investigation of this matter.

b. Johnna LaRue, Deputy Chief of Investigations
Nevada State Board of Medical Examiners
9600 Gateway Drive
Reno, NV 89521

Ms. LaRue, or her designee, is expected to verify documentary evidence obtained during the investigation of this case and testify regarding the investigation of this matter.

c. Stephanie Marie Elmquist, M.D.
c/o Nevada State Board of Medical Examiners
9600 Gateway Drive
Reno, NV 89521

Dr. Elmquist is expected to testify regarding her review of this case and Respondent's care of Patient A.

d. David Kayle McCleve, PA-C
c/o Lisa J. Zastrow, Esq.
Garin Law Group
9900 Covington Cross Drive, Suite 210
Las Vegas, NV 89144

Mr. McCleve is expected to testify as to his conduct and to respond to the allegations in the Complaint.

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

The IC reserves the right to amend and supplement this list as required for prosecution of this case and may provide an amended or supplemented witness list on or before the prehearing conference pursuant to NAC 630.465.

DATED this 7th day of April, 2025.

INVESTIGATIVE COMMITTEE OF THE
NEVADA STATE BOARD OF MEDICAL EXAMINERS

By: Deonne E. Contine

DEONNE E. CONTINE
General Counsel
9600 Gateway Drive
Reno, NV 89521
Tel: (775) 688-2559
Email: dcontine@medboard.nv.gov
Attorney for the Investigative Committee

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

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

CERTIFICATE OF SERVICE

I hereby certify that I am employed by the Nevada State Board of Medical Examiners and that on the 7th day of April, 2025, I served a file-stamped copy of the foregoing **RESPONSE TO RESPONDENT'S WRITTEN DISCOVERY REQUEST**, via U.S. Certified Mail, postage pre-paid, to the following parties:

DAVID KAYLE MCCLEVE, PA-C
c/o Lisa J. Zastrow, Esq.
Garin Law Group
9900 Covington Cross Drive, Suite 210
Las Vegas, NV 89144
Respondent

Tracking No.: 9171 9690 0935 0255 7029 09

DATED this 7th day of April, 2025.

MERCEDES FUENTES
Legal Assistant
Nevada State Board of Medical Examiners

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

BEFORE THE BOARD OF MEDICAL EXAMINERS OF THE STATE OF NEVADA

* * * * *

In the Matter of Charges and Complaint Against: **DAVID KAYLE McCLEVE, PA-C, Respondent.**	**Case No. 24-42281-1**

FILED

MAY 07 2025

NEVADA STATE BOARD OF MEDICAL EXAMINERS

By: _____

PREHEARING CONFERENCE STATEMENT OF THE INVESTIGATIVE COMMITTEE OF THE NEVADA STATE BOARD OF MEDICAL EXAMINERS

The Investigative Committee (IC) of the Nevada State Board of Medical Examiners (Board) submits the following Prehearing Conference Statement in accordance with NAC 630.465 and the Hearing Officer's Scheduling Order filed on February 14, 2025.

I. LIST OF WITNESSES

The IC of the Board lists the following witnesses whom it may call at the hearing on the charges in the Complaint against Respondent filed herein:

a. Johnna LaRue, Deputy Chief of Investigations
Nevada State Board of Medical Examiners
9600 Gateway Dr.
Reno, NV 89521

Ms. LaRue is expected to verify documentary evidence obtained during the investigation of this case and testify regarding the investigation of this matter.

b. Ernesto Diaz, Chief of Investigations
Nevada State Board of Medical Examiners
9600 Gateway Dr.
Reno, NV 89521

Mr. Diaz is expected to verify documentary evidence obtained during the investigation of this case and testify regarding the investigation of this matter.

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c. Kory Linn, Chief of Licensing
Nevada State Board of Medical Examiners
9600 Gateway Dr.
Reno, NV 89521

Ms. Linn is expected to verify documentary evidence obtained during the investigation of this case and testify regarding the investigation of this matter.

d. Stephanie Elmquist, PA-C
c/o Nevada State Board of Medical Examiners
9600 Gateway Dr.
Reno, NV 89521

Ms. Elmquist is a Physician Assistant and is licensed to practice medicine in the State of Nevada. Ms. Elmquist has conducted a medical review of this case and is expected to testify regarding her medical review and the applicable standard of care.

c. David Kayle McCleve, PA-C
c/o Lisa J. Zastrow, Esq.
Garin Law Group
9900 Covington Cross Drive, Suite 210
Las Vegas, NV 89144

Mr. McCleve is expected to testify regarding the facts and circumstances surrounding the formal Complaint in this case.

All witnesses identified by Respondent in his prehearing conference statement and/or in any subsequent amended, revised or supplemental prehearing conference statement, or list of witnesses disclosed by Respondent of persons he may call to testify at the hearing herein.

The IC reserves the right to amend and supplement this list as required for prosecution of this case.

II. LIST OF EXHIBITS

The IC of the Board lists the following exhibits that it may introduce at the hearing on the charges and formal Complaint against the Respondent. Additionally, the IC of the Board reserves the right to rely on all exhibits listed in Respondent's prehearing conference statement and any supplement and/or amendment thereof.

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///

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

EXHIBIT NO.	DESCRIPTION	BATES RANGE (NSBME)
1	Allegation Letter to David McCleve, PA-C dated June 5, 2023	001 - 002
2	Response Letter from David McCleve, dated July 21, 2023	003 - 006
3	Allegation Letter to Andrew Sheep, M.D., dated June 5, 2023	007 - 008
4	Response Letter from Andrew Sheep, M.D., dated June 14, 2023	009 - 010
5	Allegation Letter to Richard Harris, M.D., dated November 20, 2023	011 - 012
6	Response Letter from Richard Harris, M.D., dated June 7, 2024	013
7	List of Supervising Physicians for Mr. McCleve	014
8	North Vista Emergency Room Medical Records	015 - 029
9	Stephanie Elmquist, PA-C Curriculum Vitae	030 - 031
10	Email from Ms. Bradley to Mr. McCleve RE Medispa Questions, dated March 17, 2023	032 - 033

The IC reserves the right to use any exhibits relied upon or identified by Respondent and reserves the right to amend and supplement this list of exhibits as required.

DATED this 7th day of May, 2025.

INVESTIGATIVE COMMITTEE OF THE
NEVADA STATE BOARD OF MEDICAL EXAMINERS

By: Deonne E. Contine

DEONNE E. CONTINE
General Counsel
9600 Gateway Drive
Reno, NV 89521
Email:dcontine@medboard.nv.gov
Attorney for the Investigative Committee

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

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

CERTIFICATE OF SERVICE

I hereby certify that I am employed by the Nevada State Board of Medical Examiners and that on the 7th day of May, 2025, I served a file-stamped copy of the foregoing **PREHEARING CONFERENCE STATEMENT OF THE INVESTIGATIVE COMMITTEE OF THE NEVADA STATE BOARD OF MEDICAL EXAMINERS**, via Fed Ex First Overnight postage pre-paid, to the following parties:

DAVID KAYLE MCCLEVE, PA-C
c/o LISA ZASTROW, ESQ.
Lipson Neilson
9900 Covington Cross Suite 120
Las Vegas, NV 89144
Respondent

Tracking No.: 881090152162

PATRICIA HALSTEAD, ESQ.
615 S. Arlington Avenue
Reno, NV 89509
Hearing Officer

Tracking No.:881090296830

With courtesy copy of the Prehearing Statement without exhibits by email to:

Lisa Zastrow, Esq., at lzastrow@lipsonneilson.com
Patricia Halstead, Esq., at phalstead@halsteadlawoffices.com

DATED this 7th day of May, 2025.

MERCEDES FUENTES
Legal Assistant
Nevada State Board of Medical Examiners

GARIN LAW GROUP
LISA J. ZASTROW, ESQ.
Nevada Bar No. 9727
9900 Covington Cross Drive, Suite 210
Las Vegas, Nevada 89144
Phone: (702) 382-1500
Fax: (702) 382-1512
lzastrow@garinlawgroup.com

Attorneys for Respondent

FILED

MAY 09 2025

NEVADA STATE BOARD OF MEDICAL EXAMINERS

By:

BEFORE THE BOARD OF MEDICAL EXAMINERS

OF THE STATE OF NEVADA

In the Matter of Charges and Complaint Against: DAVID KAYLE McCLEVE, P.A.-C Respondent	**Case No. 24-4228-1** **RESPONDENT DAVID KAYLE MCCLEVE, P.A.-C's PRE-HEARING STATEMENT** **Pre-hearing Conference: May 9, 2025** **Hearing: July 11, 2025**

Respondent, DAVID KAYLE MCCLEVE, P.A., ("McCleve") by and through his attorneys at GARIN LAW GROUP, hereby submits his Pre-hearing Statement as follows:

PRE-HEARING DISCLOSURES

A. WITNESSES

McCleve expects to call the following witnesses listed herein:

1. David Kayle McCleve, P.A.
   c/o GARIN LAW GROUP
   9900 Covington Cross Dr., Suite 210
   Las Vegas, Nevada 89144

Mr. McCleve will testify that each and every claim asserted by the Board is inaccurate, exaggerated, inflammatory or otherwise unfounded. Mr. McCleve will testify regarding his more than adequate training and extensive practice. Mr. McCleve will discuss his treatment protocols and the treatment of Patient A. Mr. McCleve will discuss his record keeping process as well as his understanding of the qualifications of his Supervising Physician.

This is a summary only, as required by the Rules, and does not represent the full and complete proposed testimony of Mr. McCleve.

GARIN LAW GROUP
9900 Covington Cross Drive, Suite 210, Las Vegas, Nevada 89144
Telephone: (702) 382-1500 Facsimile: (702) 382-1512

McCleve reserves the right to cross examine any witness called by the Board.

McCleve reserves the right to call rebuttal witnesses as may be necessary arising from the Board's Pre-Hearing production.

B. DOCUMENTS

McCleve objects to a number of documents produced by the Board, and expects to present only the following documents at the hearing, mostly in cross examination, which have been disclosed and produced by the Board. McCleve intents to utilize only documents produced by the Board and therefore considers the exhibits Joint, noting objections, as follows:

001-013 (NSBME Bates Range)	NSBME Allegation Letters and Responses from Mr. McCleve, Dr. Sheep, and Dr. Harris
000014 (NSBME Bates Range)	List of Supervising Physicians for Mr. McCleve
015-029 (NSBME Bates Range)	North Vista Hospital Medical Records of Patient A
030-031 (NSBME Bates Range)	Curriculum Vitae of Stephanie Elmquist, M.D.
032-033 (NSBME Bates Range)	Email from Ms. Bradley to Mr. McCleve RE Medispa Questions, dated March 17, 2023

DATED this 9th day of May, 2025.

GARIN LAW GROUP

By: */s/ Lisa J. Zastrow*
LISA J. ZASTROW, ESQ.
Nevada Bar No. 9727
9900 Covington Cross Drive, Suite 210
Las Vegas, Nevada 89144
lzastrow@garinlawgroup.com

Attorneys for Respondent

GARIN LAW GROUP
9900 Covington Cross Drive, Suite 210, Las Vegas, Nevada 89144
Telephone: (702) 382-1500 Facsimile: (702) 382-1512

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b) and Administrative Order 14-2, I certify that on the 9th day of May, 2025, I electronically served the foregoing **PRE-HEARING STATEMENT** to the following parties by email to:

Patricia Halstead, Esq. 615 S. Arlington Avenue Reno, NV 89509 (775) 322-2244 (775) 465-4144 - facsimile www.halsteadlawoffices.com phalstead@halsteadlawoffices.com *Hearing Officer*	INVESTIGATIVE COMMITTEE OF THE NEVADA STATE BOARD OF MEDICAL EXAMINERS DEONNE E. CONTINE General Counsel 9600 Gateway Drive Reno, NV 89521 Tel: (775) 688-2559 Email: dcontine@medboard.nv.gov *Attorney for the Investigative Committee*

/s/ Sydney Ochoa
An Employee of GARIN LAW GROUP

GARIN LAW GROUP
9900 Covington Cross Drive, Suite 210, Las Vegas, Nevada 89144
Telephone: (702) 382-1500 Facsimile: (702) 382-1512

GARIN LAW GROUP
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FILED
MAY 27 2025
NEVADA STATE BOARD OF MEDICAL EXAMINERS
By:

BEFORE THE BOARD OF MEDICAL EXAMINERS

OF THE STATE OF NEVADA

In the Matter of Charges and Complaint Against: DAVID KAYLE McCLEVE, P.A.-C Respondent.	**Case No. 24-42281-1** **MCCLEVE'S MOTION IN LIMINE TO EXCLUDE TESTIMONY OF JOHNNA LARUE, ERNESTO DIAZ, KORY LINN and STEPHANIE ELMOUIST, PA-C**

Respondent, DAVID KAYLE MCCLEVE, P.A. ("McCleve" or "Respondent"), by and through his attorney, Lisa J. Zastrow of Garin Law Group, hereby submits his Motion in Limine. This Motion is based on NRS 622A.330(2), 622A.370(2), as well as supportive Nevada Rules of Evidence, including controlling legal authority, as the Board failed to disclose evidence from the investigative file which it intends to introduce at Hearing to support its causes of action, including, but not limited to, information contained in reports believed to be prepared by Johnna LaRue, Ernesto Diaz, Kory Linn and Stephanie Elmquist, PA-C.

MEMORANDUM OF POINTS AND AUTHORITIES

I. Introduction and Facts.

This is a botox case in which no charges would have ever been brought against the Respondent, but for another proceeding against McCleve which was dismissed by a prior hearing officer. In short, the Board's complaint herein is retaliatory and nothing more than piling on – there is no other explanation for the Board waiting years to bring this case.

McCleve is a duly licensed Physicians Assistant in Nevada who spent the majority of his career working under extreme stress and pressure as an emergency room PA. He is not a medical doctor, yet the Board continues to apply standards and rules relating to medical doctors to

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McCleve. While working in the ER, McCleve intubated patients, performed reconstructive surgery from extensive facial lacerations, administered narcotic pain medicines and was integral in saving patients lives. McCleve also spent time in his career in dermatology wherein he performed much more invasive procedures than the procedure at issue in this matter. It was only after McCleve course corrected to a field that would free him from the intense and demanding life of an ER PA, working in cosmetic procedures, that he was now the target of this Medical Board. Cosmetic procedures are dominated by Plastic Surgeons and similarly qualified Cosmetic Surgeons and they clearly do not like the competition. McCleve can perform the same procedures rendered by an MD at a fraction of the cost.

The issue herein is not complex. Respondent injected Patient A with botox while Respondent was working in the Emergency Department at North Vista Hospital, in violation of the rules at North Vista. He did not administer the injection below any standard of care, nor did Patient A sustain any complications from the injection. Unfortunately, Patient A sustained an ***unrelated medical emergency*** following the injection – contrary to the false allegations in the Complaint. At the time, Respondent was properly licensed and supervised, within the bounds of licensing, yet he admittedly violated the ***policy*** of North Vista Hospital by administering the botox injection while working in the Emergency Department. He lost his privileges at North Vista Hospital. There was never any finding that Respondent performed the botox injection outside the standard of care of a PA. Rather, Respondent violated the policies and procedures of North Vista Hospital – and he was fired. No different from an employee being fired from any position for violating employer policies and procedures – this is not tantamount to malpractice. If being fired from a job for violating policy equaled malpractice, the amount of complaints against lawyers, doctors – all licensed professionals – would be insurmountable.

The Medical Board had this Complaint for more than two years and did nothing with the claims. It was only after another unrelated Complaint was filed against Respondent, and Dismissed by the Hearing officer, that the Medical Board brought this retaliatory Complaint. They are – without question – piling on in an effort to inflict punitive consequences on the Respondent in the form of having to defend this baseless Complaint, and having a public record

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that only shows this Complaint – and not his defenses. In bringing this action, the have utterly failed to place Respondent on notice – as required by due process of law- in what way he has fallen below the standard of care.

Specifically, Count I of the Complaint is for "Malpractice" which the Board states as defined at NRS 630.301(4). NRS 630.301(4) simply states that the following acts may be grounds for initiating disciplinary action: (4) Malpractice…" *Id.* Malpractice is further defined at NAC 630.040 as "the failure of a **physician**, in treating a patient, to use the reasonable care, skill or knowledge ordinarily used under similar circumstances." Respondent is not a physician. He is a physician's assistant, thus the Boards reliance on NRS 630.301(4) and NAC 630.040 are called in to question, when read together with the entire code.

On March 18, 2025, Respondent served the Board with a Request for Discovery pursuant to NRS 622A.330 which provides:

> 1. At any time after being served with the charging document, the licensee may file with the regulatory body or hearing panel or officer a written discovery request for a copy of all documents **and other evidence** intended to be presented by the prosecutor in support of the case and a list of proposed witnesses.
>
> 2. The investigative file for the case is not discoverable unless the prosecutor intends to present materials from the investigative file as evidence in support of the case. The investigative file for the case includes all communications, records, affidavits or reports acquired or created as part of the investigation of the case, whether or not acquired through a subpoena related to the investigation of the licensee.
>
> 3. A party may not serve any interrogatories on another party or take any depositions relating to the case, unless permitted by the regulations of the regulatory body. *See* Request attached hereto as **Exhibit 1**.

In Response, the Board identified a CV for Ms. Stephanie Elmquist, **M.D., among other things.** *See* Response attached hereto as **Exhibit 2**. First, Ms. Elmquist is not an M.D. – she is a P.A., like Respondent. Next, the Board indicated that she was prepared to testify regarding her

review of the case and standard of care. The Board did not produce any factual basis for her testimony, most certainly they did not produce any report – which Ms. Elmquist did draft. Setting aside that there is no basis in the Administrative Code that would allow a P.A. to opine on the standard of care of Respondent at an administrative proceeding, the failure to provide notice to McCleve of the facts and basis for her testimony is fatal. If the Board intends to utilize Ernesto Diaz, Johnna LaRue and Kory Linn for the same purpose, their failure to disclose the basis of their testimony is also fatal.

It is an axiomatic tenant of procedural due process that a licensee receives notice of the evidence against him. In this case, the evidence is the content of the testimony – but the Board wants all involved to suspend common sense and pretend that the evidence is paper that information is recorded upon. Due process for licensees is cemented in Nevada's procedural rules and by the Due Process Clause of the Fourteenth Amendment of the United States Constitution and as set forth in Article 1, Section 8 of the Nevada Constitution. It is fundamental that administrative bodies must give notice to the defending party of "the issues on which decision will turn and . . . ***the factual material on which the agency relies for decision so that he may rebut it.***" *Dutchess Bus. Servs. v. Nev. State Bd. of Pharm.*, 124 Nev. 701, 711. Yet, the Board will no doubt pretends that the requested reports are "confidential" until they decide it is not.

Not only have they charged McCleve under the wrong statutes, engaged in a process that is not permitted under their rules, failed to bring charges against McCleve supervisor and utterly failed to provide evidence that McCleve has been found guilty of malpractice pursuant to NAC 630.380(f), the Board has failed to identify the factual basis for the claims against McCleve in violation of NRS 622A.330.

II. Argument.

"The usual purpose of motions in limine," "is to preclude the presentation of evidence deemed inadmissible and prejudicial to the moving party." *Kelly v. New West Federal Savings*, 49 Cal. App. 4th 659, 669-670 (1996). The admission of undisclosed expert testimony is not only extremely prejudicial to McCleve, it is a violation of black and white letter law in Nevada.

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A. NRS 622A.330 Mandates The Exclusion of Undisclosed Expert Reports And Investigative Findings.

The Board seems to be under the impression that they can hide evidence from Respondents until the day of the Hearing. This is wrong, as discussed in detail below. *See* NRS 622A.330(2). In its false belief, the Board claims that they are not "generally" subjected to the Nevada Rules of Civil Procedure. This is only partially accurate; the Board is held to fundamental laws and the procedural rules designed to guaranty Respondents due process. *Minton v. Bd. of Med. Exam'rs*, 110 Nev. 1060, 1082, 881 P.2d 1339, 1354 (1994) (Court recognized that a physician's interest in practicing medicine is a property right that must be afforded due process), Moreover, the Nevada Rules of Evidence are expressly referenced at NRS 622A.370(2) insomuch as this Honorable Hearing Officer is not required to ***strictly adhere*** to rules of evidence "in conducting the hearing." *See* NRS 622A.370. However, there is no ability for this Honorable Hearing Officer to disregard Nevada substantive law with respect to the Rules of Evidence designed to ensure Due Process of Law, nor to disregard the strict procedural rules at NRS 622A and NRS 233B.

First, the Board will incorrectly rely upon a statue regarding "Reports, Complaints, **Investigations and Preliminary Proceedings**." *See* heading for sections NRS 630.30665 through NRS 630.336 (emphasis added). Specifically, they rely upon NRS 630.336, regarding the ***investigative process*** provides as follows:

> **NRS 630.336 Confidentiality of certain proceedings, reports, complaints, investigations, records and other information; exceptions.**
>
> 1. Any deliberations conducted or vote taken by the Board **or any investigative committee of the Board regarding its ordering of a physician, perfusionist, physician assistant or practitioner of respiratory care to undergo a physical or mental examination or any other examination designated to assist the Board or committee in determining the fitness of a physician**, perfusionist, physician assistant or practitioner of respiratory care are not subject to the requirements of NRS 241.020.
>
> 2. Except as otherwise provided in subsection 3 or 4, all applications for a license to practice medicine, perfusion or respiratory care, any charges filed by the Board, financial records of the Board, formal hearings

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on any charges heard by the Board or a panel selected by the Board, records of such hearings and any order or decision of the Board or panel must be open to the public.

3. **Except as otherwise provided in NRS 239.0115, the following may be kept confidential:**

(a) Any statement, evidence, credential or other proof submitted in support of or to verify the contents of an application;

(b) Any report concerning the fitness of any person to receive or hold a license to practice medicine, perfusion or respiratory care; and

(c) Any communication between:

(1) The Board and any of its committees or panels; and

(2) The Board or its staff, investigators, experts, committees, panels, hearing officers, advisory members or consultants and counsel for the Board.

4. **Except as otherwise provided in subsection 5 and NRS 239.0115, a complaint filed with the Board pursuant to NRS 630.307, all documents and other information filed with the complaint and all documents and other information compiled as a result of an investigation conducted to determine whether to initiate disciplinary action are confidential.**

5. The formal complaint or other document filed by the Board to initiate disciplinary action and all documents and information considered by the Board when determining whether to impose discipline are public records.

6. The Board shall, to the extent feasible, communicate or cooperate with or provide any documents or other information to any other licensing board or agency or any agency which is investigating a person, including a law enforcement agency. Such cooperation may include, without limitation, providing the board or agency with minutes of a closed meeting, transcripts of oral examinations and the results of oral examinations.

(Added to NRS by 1977, 826; A 1985, 2241; 1987, 201; 1989, 664; 2001, 769; 2003, 3435; 2007, 2134; 2009, 2968; 2011, 2863; 2013, 2215)

See NRS 633.336[1] (emphasis added). The beginning of the statute calls for confidentiality in *investigating* the mental fitness of a licensee. The remaining provisions discuss confidentiality of the *investigative file* (although the text does say "may"), again in the

[1] While the Board has not taken the position that NAC 630.260 has any relevance, McCleve points out that this Honorable Hearing Officer can take notice of "technical or scientific facts" at the time and place of the hearing, the report of the Boards experts are not "technical or scientific facts," rather, experts *rely on technical and scientific facts.*

context of the investigation. The investigation in this case is over and the case is in an active prosecution and adjudication phase. The Board brought (baseless) charges against McCleve. *See* Complaint (already on file). Now, the rules with respect to "**Adjudication of Contested Cases**" apply, which are found at NRS 622A.300 through NRS 622A.410.

Contrary to the Boards position that its "expert" report is confidential, NRS 622A.330(2) expressly provides otherwise:

> **NRS 622A.330 Discovery; limitations on interrogatories and depositions.**
>
> 1. At any time after being served with the charging document, the licensee may file with the regulatory body or hearing panel or officer a written discovery request for a copy of all documents **and other evidence** intended to be presented by the prosecutor in support of the case and a list of proposed witnesses.
>
> 2. The investigative file for the case is not discoverable unless the prosecutor intends to present materials from the investigative file as evidence in support of the case. The investigative file for the case includes all communications, records, affidavits or reports acquired or created as part of the investigation of the case, whether or not acquired through a subpoena related to the investigation of the licensee.
>
> 3. A party may not serve any interrogatories on another party or take any depositions relating to the case, unless permitted by the regulations of the regulatory body.
>
> (Added to NRS by 2005, 746)

See NRS 622A.330. McCleve expressly requested portions of the investigative file, specifically the Boards peer reviewer reports/expert reports, in compliance with NRS 622A.330(1). The Board arrogantly refused, but the plain and controlling language of NRS 622A.330(2) mandates:

> The investigative file for the case is not discoverable unless the prosecutor intends to present materials from the investigative file as evidence in support of the case. The investigative file for the case includes all communications, records, affidavits or reports acquired or created as part of the investigation of the case, whether or not acquired through a subpoena related to the investigation of the licensee. *Id.*

The Board clearly plans to prosecute this case with materials in its files that have not been disclosed – namely reports of Ms. Emlquist. Thus, the Board has failed to produce evidence

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expressly requested pursuant to NRS 622A.330(1) and has expressly failed to produce information it clearly intends to rely upon in violation of NRS 622A.330(2). The Board cannot say, with a straight face, that they are not required to produce reports *but may allow testimony rooted in those reports.* That will be their argument – they will say that because they will not introduce the paper – they do not have to give Respondent the paper. But it is not the paper that is the "material" that will be presented by the Board – it is the content of that paper, the report – through testimony. Their position, in short, is absolutely absurd.

The rule is clear, they are required to produce this information to McCleve, in at least two respects pursuant to NRS 622A.330 and they failed. For this reason alone, the Board must not be allowed to call Ms. Elmquest, and possibly others – if their testimony is rooted in undisclosed information.

There is no question that the Board improperly relied upon statutes related to the investigative process in denying Respondents access to materials needed for trial. This is a denial of Respondent's due process rights. Once the Board initiated the adjudicative process, the contents of NRS 622A.300 through NRS 622A.410 were triggered subject to the due process mandates.[2] Upon an express request, the Board failed to provide McCleve with any information, much less the written reports from Ms. Elmquest.

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[2] See *Nellis Motors v. State*, 124 Nev. 1263, 1268, 197 P3.d 161 (2008), the Nevada Supreme Court explained the amount of due process required in administrative hearing and confirmed that Nevada follows a three-pronged test set forth by the U.S. Supreme Court in *Mathews v. Eldrige,* 424 U.S. 319, 335, 96 S. Ct. 893, 47 L. Ed. 2d 18 (1976)).: "(1) the private interest affected; (2) the risk of erroneous deprivation by the procedures used; and (3) the government interest to be protected in light of the fiscal and administrative burdens imposed by additional procedural safeguards." Each of these factors supports mandatory pre-trial disclosure of evidence by the Board. Notably, by refusing to provide evidence in advance of the hearing, the risk of an erroneous deprivation is heightened. Respondents must blindly defend the summary allegations in the complaint without knowing what, if any, evidence the Board might rely on at trial. This sets up a trial by ambush and increases the risk of an erroneous deprivation. For the third factor, any fiscal or administrative burden associated making pre-trial disclosures in nominal. Most "evidence" could be disclosed and delivered electronically by the Board and, certainly, the Board's attorney will know well in advance of trial the evidence needed to prove their case.

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B. NRS 233B.123(1) Mandates the Exclusion of Undisclosed Expert Reports and Opinions As Prejudicial.

NRS 622A.370 defines the parameters of the Boards burden of proof as well as this Honorable Hearing Officers rules regarding the proceeding. NRS 622A.370 expressly incorporates NRS 233B.123. NRS 233B.123 states that "Irrelevant, immaterial or unduly repetitious evidence must be excluded." *See* NRS 233B.123(1). The Rule further mandates, "Evidence may be admitted, except where it is precluded by statute, if it is a type commonly relied upon by a reasonable and prudent person in the conduct of their affairs." *Id.* Here, the testimony and reports of Ms. Elmquest is inadmissible as irrelevant as the prejudicial value of the testimony outweighs probative value. "Although relevant, evidence is not admissible if its probative value is substantially outweighed by the danger of unfair prejudice, of confusion of the issues or misleading the jury." *See* NRS § 48.035(1). With respect to admitting relevant testimony which is outweighed by the prejudicial value of that testimony, when a moving party shows that an error is prejudicial, the error is not harmless and reversal may be appropriate. *Wyeth v. Rowatt*, 126 Nev. 446, 465, 244 P.3d 765, 778 (2010).

Here, the Board is mandated to produce its report as requested, and it failed to do so. NRCP 16.1 has the same mandate. *See* NRCP 16.1(a)(2). NRCP 16.1(a)(2) mandates that the disclosure of an expert "must be accompanied by a written report – prepared and signed by the witness – if the witness is one retained or specifically employed to provide expert testimony in the case or one whose duties as the party's employee regularly involve giving expert testimony." *Id.* At Bar, the Board not only simply provided the names of two proposed exerts, they failed to disclose their reports even in the absence of express requests. It's the position of McCleve that the Board is mandated to provide the report, if it intends to rely on the findings, even in the face of a request. But this Hearing Officer is not left with such a decision, here the decision is clear. McCleve requested the information and the Board flatly refuses, which causes exceptional prejudice to McCleve as he is unable to defend unnoticed positions of the Board. It is really incredible that the Board would make such a clear violation of due process – something they apparently routinely do.

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In Nevada, a party who fails to disclose an expert pursuant to NRCP 16.1 (unless the failure is harmless), is expressly prohibited from using that evidence at trial. *See In Re Nelson,* 2017 Nev. Dist. LEXIS 1432, *5. The Boards failure to disclose is not only harmless, it is exceptionally prejudice – and the Boards failure is intentional. Moreover, it is abuse of discretion and ***reversible error*** for the district court to permit an expert witness to testify when disclosure is not timely made. *See FCH1, LLC v. Rodriguez*, 335 P.3d 183, 190, 130 Nev. Adv. Rep. 46 (Nev. 2014).

Here, the prejudice to McCleve in walking into a hearing completely blind to the evidence against him is *prima facia* prejudicial. The Nevada Legislature is clearly aware of this, which is why they made the investigative file, after initiation of a contested proceeding, discoverable. We know how Nevada courts treat this issue, it is clear. Failure to exclude an expert report when undisclosed is reversible error. For these reasons, the Board cannot be allowed to call Ms. Elmquest – or other witnesses - to testify to any findings that are contained in reports that have not been disclosed.

C. The Board's Failure Violates Due Process of Law.

Under Nevada's due process clause, no person "shall be deprived of life, liberty or property without due process of law." Nev. Const. Art. 1, §8(5). While the Board is violating the plain language of NRS 622A.330 the Board is additionally violating McCleve's basic procedural due process rights in his property, his license. The Board seems to be under the false impression that procedural due process does not apply to this proceeding – to the contrary.

"Procedural due process rules are meant to protect persons not from the mistaken or unjustified deprivation of life, liberty, or property." *Carey v. Piphus*, 435 U.S. 247, 259 (1978). "[P]procedural due process rules are shaped by the risk of error inherent in the truth-finding process as applied to the generality of cases.") *See also*, *Mathews v. Eldridge,* 424 U.S. 319, 344 (1976). Thus, the required elements of due process are those that "minimize substantively unfair or mistaken deprivations" by enabling persons to contest the basis upon which a state proposes to deprive them of protected interests. *Fuentes v. Shevin*, 407 U.S. 67, 81 (1972). The core of these requirements is ***notice*** and a hearing before an impartial tribunal (emphasis added).

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"An elementary and fundamental requirement of due process in any proceeding which is to be accorded finality is notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections." *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950). The Nevada Supreme Court has recognized that the failure to produce exculpatory material implicates due process violations. *Minton v. Board of Med. Exam'rs,* 110 Nev. 1060, 1084 (1994).[3] Here, McCleve has essentially zero notice of the alleged facts supporting the claims against him. Virtually no evidence, exculpatory or otherwise, has been disclosed to McCleve.

Our system of justice abhors "trial by ambush" where a party withholds information and then later presents this information at trial, effectively ambushing the opposing party and gaining an advantage by the surprise attack.) *See e.g., Land Baron v. Bonnie Springs Family LP*, 131 Nev. 686, 701 n.14, 356 P.3d 511, 522 n.14 (2015). As stated above, it is fundamental that administrative bodies must give notice to the defending party of "the issues on which decision will turn and . . . ***the factual material on which the agency relies for decision so that he may rebut it."*** *Dutchess Bus. Servs. v. Nev. State Bd. of Pharm.*, 124 Nev. 701, 711. In *Dutchess.* the Complaint laid out express violations of the law such buying and selling adulterated and misbranded drugs. *Id.* at 706. Such conduct is a violation of NRS 585.520(1) prohibiting the "manufacturing, sale ....of adulterated drugs." There is no "standard of care" issue with such violations – they are express, clear and the facts were identified in the *Dutchess* Complaint – selling adulterated drugs.

This is in sharp contrast to the issues at bar. Here, McCleve is accused of violating NRS 630.301(4) – Malpractice which is defined as "the failure of a **physician**, in treating a patient, to the reasonable care, skill, or knowledge of ordinarily used under similar circumstances." *See* NRS 630.040. First, McCleve is not an MD, thus this statute does not apply. Should the Board attempt to present evidence of standard of care, practitioners in the field make the "malpractice" determination, which is why the Board intends to have Ms. Elmquist testify. Thus, the "factual

[3] In *Nassiri v. Chiropractic Physicians' Bd. of Nev.*, 130 Nev. 245, 251, 327 P.3d 487 (2014), the Court noted that burden of proof analysis in *Minton* required clarification. Notably, however, the due process implications of both *Minton* cases remain the same.

basis" for the charges against McCleve are found in the hidden investigative expert reports, unlike in *Dutchess* where the factual basis is selling unadulterated drugs. In the case at bar, the largely unknown conduct in which the Board complaints rests entirely on expert opinion – expert opinions which have not been disclosed.

The same is true with respect to ***each of the counts*** against McCleve, especially with respect to practicing the Scope of a Licensee. The Boards own Complaint contradicts the actual rule. The Board claims that McCleve violated NRS 630.306(1)(e) by violating the "standards adopted by the Board", yet the Board (even upon MULTIPLE requests) **has failed to articulate that standard** – *because it does not exist.* There is no advisory opinion, there is no administrative standard adopted by the board, there is no memorandum with such standards, there is no NAC or NRS – this is simply an entirely unknown and undisclosed "standard". Thus, Board will claim it exists within the testimony of witnesses who set the standard– the details of which testimony has been intentionally withheld. Ironically, the Board will have to prove that McCleve was somehow aware of such undisclosed "standard" for practicing within his scope. How can McCleve possibly defend against an unnoticed and secret "standard of care" regarding his scope of practice.

Moreover, the Board only states a portion of the Rule which actually states: NRS 630.306(1)(e) provides for discipline should a practitioner practice outside their scope for performing outside the scope "***permitted by law or if the licensee knows or has reason to know that he or she is not competent to perform or which are beyond the scope of his or her training.***" *See* NRS 630.306(1)(e). Again, the Board has not identified any law which prohibits McCleve from performing the procedure at issue herein. Moreover, there is zero reference to what "standard" has been "adopted by the board" in the Complaint and there is no reference to "adoption of standards" within the statute. All of this amounts to a complete and utter violation of due process, especially in the face of the plain language of the statute, which is contrary to the Boards assertion, given McCleve ***knows he was actually practicing within his scope – and his knowledge is the issue*** absent a violation of law – which has not been identified. Nowhere in the Complaint is there any allegation that McCleve should have known he was allegedly

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practicing outside his scope – likely because he had no such knowledge as he was, in fact, competent and practicing within scope.

Here, the factual predicates for the charges arise from their investigation and the investigative findings – ALL of which have been kept secret from McCleve. This is not a situation where, for example, McCleve is charged with overprescribing medications and that factual predicate is listed in the complaint; rather each and every charge in the complaint hinges on the secret undisclosed investigative findings of alleged experts. This is the most egregious violation of due process. Simply, the Boards conduct in this respect is a prima facie violation of due process of law, not to mention a clear violation of the Nevada Rules of Administrative practice (each of them).

Despite the requirement of due process and clear Nevada public policy critical of trial by ambush, this is what the Board is doing. The Board plants to elicit testimony from these witnesses, the content of which has never been disclosed – by then it is simply too late for McCleve to adequately defend himself. And the Board cannot have it both ways, they cannot claim that Complaint provides adequate notice, yet introduce evidence that they have failed to produce to support the allegations. Either the Complaint speaks for itself and the Board is bound by the documents it has produced and the allegations in the Complaint, or the Board intends to ignore due process by introducing undisclosed reports and/or testimony regarding those reports. It is that simple.

Finally, we know that admitting reports which have not been disclosed is reversible error, and for good reason. Here, the only remedy for the Boards refusal to provide McCleve notice is to exclude their planned evidence, the testimony of its "experts."

III. Conclusion.

Relaxed rules of procedure in an administrative hearing must not equate to the denial of a Respondents fundamental due process rights. Especially in the face of express administrative and substantive rules which are designed to protect those rights, and require notice. The Boards conduct flies in the face of these rules. For this reason, and for the reasons stated herein, the Board should be precluded from offering any evidence in the form testimony contained in reports

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drafted, but not produced, from Ms. Elmquest and others, as well as any additional information derived from undisclosed factual material.

DATED this 23rd day of May, 2025.

GARIN LAW GROUP

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CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b) and Administrative Order 14-2, I certify that on the 23rd day of May, 2025, I electronically served the foregoing **MCCLEVE'S MOTION IN LIMINE TO EXCLUDE TESTIMONY OF JOHNNA LARUE, ERNESTO DIAZ, KORY LINN and STEPHANIE ELMQUIST, PA-C** to the following parties by email to:

Patricia Halstead, Esq. 615 S. Arlington Avenue Reno, NV 89509 (775) 322-2244 (775) 465-4144 - facsimile www.halsteadlawoffices.com phalstead@halsteadlawoffices.com *Hearing Officer*	INVESTIGATIVE COMMITTEE OF THE NEVADA STATE BOARD OF MEDICAL EXAMINERS DEONNE E. CONTINE General Counsel 9600 Gateway Drive Reno, NV 89521 Tel: (775) 688-2559 Email: dcontine@medboard.nv.gov *Attorney for the Investigative Committee*

/s/ Sydney Ochoa
An Employee of GARIN LAW GROUP

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EXHIBIT 1

FILED
MAR 18 2025
NEVADA STATE BOARD OF MEDICAL EXAMINERS
By: _____

GARIN LAW GROUP
LISA J. ZASTROW, ESQ.
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Attorneys for Respondent

BEFORE THE BOARD OF MEDICAL EXAMINERS

OF THE STATE OF NEVADA

In the Matter of Charges and Complaint Against: DAVID KAYLE McCLEVE, P.A.-C Respondent	**Case No. 24-4228-1** **REQUEST FOR DISCOVERY PURSUANT TO NRS 622A.330**

Pursuant to NRS 622A.330, Respondent submits this request for written discovery as follows:

1. A copy of all documents ***and other evidence*** intended to be presented by the prosecutor in support of the case, including a list of proposed witnesses;
2. The investigative file, not limited to all communications, records, affidavits and reports acquired and created as a part of the investigation of this case.

DATED this 18th day of March, 2025.

GARIN LAW GROUP

By: */s/ Lisa J. Zastrow*
LISA J. ZASTROW, ESQ.
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lzastrow@garinlawgroup.com

Attorneys for Respondent

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Telephone: (702) 382-1500 Facsimile: (702) 382-1512

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b) and Administrative Order 14-2, I certify that on the 18th day of March, 2025, I electronically served the foregoing **REQUEST FOR DISCOVERY PURSUANT TO NRS 622A.330** to the following parties by email to:

INVESTIGATIVE COMMITTEE OF THE NEVADA STATE BOARD OF MEDICAL EXAMINERS DEONNE E. CONTINE General Counsel 9600 Gateway Drive Reno, NV 89521 Tel: (775) 688-2559 Email: dcontine@medboard.nv.gov *Attorney for the Investigative Committee*	

/s/ Nancy Rozan
An Employee of GARIN LAW GROUP

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Telephone: (702) 382-1500 Facsimile: (702) 382-1512

EXHIBIT 2

BEFORE THE BOARD OF MEDICAL EXAMINERS
OF THE STATE OF NEVADA

* * * * *

In the Matter of Charges and Complaint Against: **DAVID KAYLE McCLEVE, PA-C, Respondent.**	**Case No. 24-42281-1**

FILED
APR - 7 2025
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

RESPONSE TO RESPONDENT'S WRITTEN DISCOVERY REQUEST

The Investigative Committee (IC) of the Nevada State Board of Medical Examiners (Board) hereby responds to Respondent's Written Discovery Request (Request) filed pursuant to NRS 622A.330.

I. DOCUMENTS INTENDED TO BE USED IN PROSECUTION

In response to Respondent's Request, the IC produces the following documents, hereto attached as **Exhibit 1** to this instant response:

1. NSBME Allegation Letters and Responses from Mr. McCleve, Dr. Sheep, and Dr. Harris;
2. List of Supervising Physicians for Mr. McCleve;
3. North Vista Hospital Medical Records of Patient A;
4. Curriculum Vitae of Stephanie Elmquist, M.D.; and
5. Email from Ms. Bradley to Mr. McCleve RE Medispa Questions, dated March 17, 2023.

The IC reserves the right to amend and supplement its production as required for prosecution of this case and may provide amended or supplemented evidence on or before the prehearing conference pursuant to NAC 630.465.

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(775) 688-2559

II. LIST OF PROPOSED WITNESSES

The IC lists the following witnesses whom it may call at the hearing on the charges in the Complaint against Respondent filed herein:

a. Kory Linn, Chief of Licensing
Nevada State Board of Medical Examiners
9600 Gateway Drive
Reno, NV 89521

Ms. Linn, or her designee, is expected to verify documentary evidence obtained during the investigation of this case and testify regarding the investigation of this matter.

b. Johnna LaRue, Deputy Chief of Investigations
Nevada State Board of Medical Examiners
9600 Gateway Drive
Reno, NV 89521

Ms. LaRue, or her designee, is expected to verify documentary evidence obtained during the investigation of this case and testify regarding the investigation of this matter.

c. Stephanie Marie Elmquist, M.D.
c/o Nevada State Board of Medical Examiners
9600 Gateway Drive
Reno, NV 89521

Dr. Elmquist is expected to testify regarding her review of this case and Respondent's care of Patient A.

d. David Kayle McCleve, PA-C
c/o Lisa J. Zastrow, Esq.
Garin Law Group
9900 Covington Cross Drive, Suite 210
Las Vegas, NV 89144

Mr. McCleve is expected to testify as to his conduct and to respond to the allegations in the Complaint.

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The IC reserves the right to amend and supplement this list as required for prosecution of this case and may provide an amended or supplemented witness list on or before the prehearing conference pursuant to NAC 630.465.

DATED this 7th day of April, 2025.

INVESTIGATIVE COMMITTEE OF THE
NEVADA STATE BOARD OF MEDICAL EXAMINERS

By: Deonne E. Contine

DEONNE E. CONTINE
General Counsel
9600 Gateway Drive
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Email: dcontine@medboard.nv.gov
Attorney for the Investigative Committee

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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 7th day of April, 2025, I served a file-stamped copy of the foregoing **RESPONSE TO RESPONDENT'S WRITTEN DISCOVERY REQUEST**, via U.S. Certified Mail, postage pre-paid, to the following parties:

DAVID KAYLE MCCLEVE, PA-C
c/o Lisa J. Zastrow, Esq.
Garin Law Group
9900 Covington Cross Drive, Suite 210
Las Vegas, NV 89144
Respondent

Tracking No.: 9171 9690 0935 0255 7029 09

DATED this 7th day of April, 2025.

MERCEDES FUENTES
Legal Assistant
Nevada State Board of Medical Examiners

OFFICE OF THE GENERAL COUNSEL
Nevada State Board of Medical Examiners
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BEFORE THE BOARD OF MEDICAL EXAMINERS OF THE STATE OF NEVADA

* * * * *

In the Matter of Charges and Complaint Against: **DAVID KAYLE McCLEVE, PA-C** **Respondent.**	**Case No. 24-42281-1**

FILED
JUN - 5 2025
NEVADA STATE BOARD OF MEDICAL EXAMINERS
By:

OPPOSITION TO RESPONDENT'S MOTION IN LIMINE TO EXCLUDE TESTIMONY OF JOHNNA LARUE, ERNESTO DIAZ, KORY LINN, AND STEPHANIE ELMQUIST, PA-C

The Investigative Committee (IC) of the Nevada State Board of Medical Examiners (Board), by and through its undersigned counsel, hereby opposes Respondent's Motion in Limine to Exclude Testimony of Johnna LaRue, Ernesto Diaz, Kory Linn, and Stephanie Elmquist, PA-C, submitted May 23, 2025.

MEMORANDUM OF POINTS AND AUTHORITIES

I. FACTUAL HISTORY

On November 22, 2024, the IC filed a formal complaint against Respondent alleging the following violations of NRS Chapter 630:

Count I: Malpractice: Respondent failed to use the reasonable care, skill or knowledge ordinarily used under similar circumstances[1] because he injected a "private pay" client with Botulinum toxin during a break from his emergency department shift at North Vista Hospital.

Count II: Records Violation: Respondent failed to correctly document his actions when he treated Patient A, whose medical records were not timely, legible, accurate, and complete because Respondent did not create any medical records for his treatment of Patient A.

[1]The construction of the term malpractice in NAC 630.040 includes all categories of licenses issued by the Board. The regulations were updated to clarify that in LCB File No. R171-20, June 2, 2023. The reference to the old language in the complaint was in error because the complaint template was not updated prior to filing the Complaint against Respondent.

Count III: Failure to Have a Supervision Agreement on File with the Board: Respondent did not provide a supervision agreement on the form required by the Board and signed by both he and his supervising physician prior to the time he injected Patient A with Botulinum toxin.

Count IV: Practicing Beyond Scope of License: Respondent provided medical services outside the scope of practice of his supervising physician because he injected Patient A with Botulinum toxin at a location within the emergency department at North Vista Hospital when he was not authorized by his supervising physician to provide such treatment.

On January 29, 2025, Respondent filed an Answer which included general denials and narrative regarding all the counts in the Complaint.

On February 13, 2025, the Early Case Conference required by NRS 630.339(3) was held telephonically.

On May 9, 2025, the Prehearing Conference required by NRS 630.339(3)(b)(3) was held telephonically by which time the IC provided its prehearing conference statement and complied with the provisions of NAC 630.465(2) and (3), including listing the IC's proposed witnesses and their qualifications and a summary of the testimony of each proposed witness. The IC also provided copies of documents intended to be used in prosecution of the case against Respondent. Specifically, the IC listed Stephanie Elmquist, PA-C, in addition to the licensing and investigative staff with knowledge of the investigation and licensing process. Ms. Elmquist was identified as having conducted a medical review of this case and will testify regarding her review and the applicable standard of care, and Ms. Elmquist's CV was provided.

Prior to the Prehearing Conference, under NRS 622A.330, Respondent's counsel requested a copy of the entire investigative file of the IC in this matter. The evidence on which the IC will rely at the hearing is the oral testimony of Ms. Elmquist. Additionally, the documents the licensing and investigative staff will authenticate or discuss have been disclosed pursuant to NAC 630.465. On May 23, 2025, Respondent submitted its Motion in Limine to Exclude Testimony of Ms. Elmquist and licensing and investigative staff. The IC opposes the Respondent's Motion.

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II. LEGAL ARGUMENT

A. Only Documents in the Board's Investigative File That Are to be Reviewed by the Board in Imposing Discipline are Public Under NRS 630.336(4) and (5).

As this matter involves an issue of statutory interpretation, a court would first turn to the language therein. To ascertain legislative intent, the text of the statute should be reviewed to determine its plain meaning and apply any "clear and unambiguous" language "as written." *See Locker v. State,* 138 Nev. 653, 655, 516 P.3d 149, 152 (2022). In so doing, the Court needs to "avoid statutory interpretation that renders language meaningless or superfluous." *Id.*

The plain language of NRS 630.336(4) and (5) is as follows:

> 4. Except as otherwise provided in subsection 5 and NRS 239.0115, a complaint filed with the Board pursuant to NRS 630.307, all documents and other information filed with the complaint and all documents and other information compiled as a result of an investigation conducted to determine whether to initiate disciplinary action are confidential.
>
> 5. The formal complaint or other document filed by the Board to initiate disciplinary action and all documents and information considered by the Board when determining whether to impose discipline are public records.

The reference to initiation of disciplinary action in subsection 4 of NRS 630.336 is distinct from the imposition of discipline referenced in subsection 5 of NRS 630.336. NRS 630.339(1) provides that disciplinary action is initiated by the Investigative Committee of the Board filing a formal complaint. Conversely, the imposition of discipline is addressed in NRS 630.352 which states that the Board shall vote to impose discipline. The decision to initiate disciplinary action can result in a disciplinary hearing but the imposition of discipline can only occur if the Board finds, after reviewing the entire record from the disciplinary proceedings, that the charges in the complaint have been substantiated, and a violation has occurred. *See Barney v. Mt. Rose Heating & Air Conditioning,* 124 Nev. 821, 826-27, 192 P.3d 730, 734 (2008) ("Statutes are to be read in the context of the act and the subject matter as a whole....").

Based on the confidentiality distinction between the investigative information gathered to determine whether to file a formal complaint, and the investigative information considered by the Board when determining whether to impose discipline, a licensee is entitled only to the documents

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from the investigative file that the prosecutor introduces at the hearing on the formal complaint as those are the investigative documents on which the Board may rely when imposing discipline.

B. The Confidentiality Provisions in NRS Chapter 630.336(4) and (5) Are Congruent with the Discovery Provisions in NRS 622A.330.

The provisions of NRS Chapter 622A apply to certain occupational regulatory bodies or professions, including the Board. Consequently, these provisions cannot be overlooked and the confidentiality provisions in NRS 630.336(4) and (5) must be read in conjunction with the discovery requirements in NRS Chapter 622A. NRS 622A.330 governs the discovery requirements in administrative procedures before regulatory bodies. It provides:

> **NRS 622A.330 Discovery; limitations on interrogatories and depositions.**
> 1. At any time after being served with the charging document, the licensee may file with the regulatory body or hearing panel or officer a written discovery request for a copy of all documents and other evidence intended to be presented by the prosecutor in support of the case and a list of proposed witnesses.
> 2. The investigative file for the case is not discoverable unless the prosecutor intends to present materials from the investigative file as evidence in support of the case. The investigative file for the case includes all communications, records, affidavits or reports acquired or created as part of the investigation of the case, whether or not acquired through a subpoena related to the investigation of the licensee.
> 3. A party may not serve any interrogatories on another party or take any depositions relating to the case, unless permitted by the regulations of the regulatory body.

NRS 622A.330(1) and (2) together as a whole elucidate that a licensee, after being served with a formal complaint, may file a written discovery request only for the evidence intended to be presented by the prosecutor at hearing. Otherwise, the materials in the investigative file for the case are not discoverable.[2]

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[2] Reading NRS 622A.330(2) to allow discovery beyond that permitted by NRS 622A.330(1) would render 622A.330(1) meaningless. *Eggleston v. Costello (In re Estate of Thomas),* 116 Nev. 492, 495 (2000) ("[N]o provision of a statute should be rendered nugatory by this court's construction, nor should any language be made mere surplusage, if such a result can be avoided. In other words, courts should avoid construing statutes so that any provision or clause is rendered meaningless.")

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C. Stephanie Elmquist, PA-C, etc. Cannot Be Excluded from Providing Witness Testimony Because She Has Been Properly Identified Pursuant to NAC 630.465.

Pursuant to NAC 630.465, at least thirty (30) days prior to a hearing, a prehearing conference is conducted where each party provides the other party with a copy of a list of proposed witnesses and their qualifications and summary of their testimony. In addition to the requirements of NRS 622A.330, each party provides any evidence that the party proposes to introduce at a hearing. All evidence, except rebuttal evidence, which is not provided to each party at the prehearing conference may not be introduced or admitted at the hearing unless good cause is shown. *See* NAC 630.465 as amended by LCB File No. R171-20, June 2, 2023, and LCB File No. R069-23, April 19, 2024.

In this case, by May 9, 2025, the date of the Prehearing Conference, the IC had identified Stephanie Elmquist, PA-C, as a witness intended to testify in this matter. The IC identified Ms. Elmquist as having conducted a medical review of this case and designated her to testify regarding her review and the applicable standard of care. A CV was also provided for Ms. Elmquist. The IC does not intend to use a report from its investigative file as documentary evidence in this case. Nevertheless, Ms. Elmquist will be subject to examination (by both parties) regarding any of her opinions on the facts and standards in this case as detailed in the Complaint against Respondent. Accordingly, the IC has provided all the documents required by NAC 630.465(3) and Ms. Elmquist was properly designated, and a summary of her testimony was provided. Accordingly, she cannot be excluded from testifying at the hearing on the IC's formal Complaint in this matter.

Additionally, while it is not clear the basis for Respondent's request to exclude licensing and investigative staff from testifying, they have been properly designated and will also testify only about the facts as alleged in the Complaint, specifically authenticating documents, and the investigative and licensing processes as provided in the Prehearing Conference Statement. Accordingly, contrary to Respondent's assertion that the IC failed to provide him with notice of the facts and basis for testimony regarding the allegations against him, the IC has complied with all required procedural safeguards including NRS 622A.330 and NAC 630.465, properly designated

witnesses and document disclosures, and a formal Complaint that was prepared with sufficient clarity to ensure that the he is able to prepare a defense that specifies the applicable provisions that Respondent is alleged to have violated. *See* NRS 630.339(1).

D. Due Process Does Not Require Disclosure of Reports the IC Does Not Intend to Use In Prosecution of Its Case Against Respondent.

Respondent contends that the IC's denial to produce any reports of its properly designated witnesses violates NRCP 16.1 and his due process rights and therefore, the witnesses' testimony should be excluded. This argument is misplaced. First, the IC agrees that Respondent is entitled to due process in this proceeding. *See Dutchess Bus. Servs., Inc. v. Nevada State Bd. of Pharmacy*, 124 Nev. 701, 711, 191 P.3d 1159, 1166 (2008) ("Although proceedings before administrative agencies may be subject to more relaxed procedural and evidentiary rules, due process guarantees of fundamental fairness still apply."). The Nevada Supreme Court has explained that in an administrative proceeding, "it is the opportunity to prepare a defense that defines due process." *Id.* at 712, 191 P.3d at 1167 (citing *Nevada State Apprenticeship Council v. Joint Apprenticeship & Training Comm.*, 94 Nev. 763, 765, 587 P.2d 1315, 1317 (1978)). Thus, a process that ensures that a respondent is apprised of the charges against him and the factual bases underlying them, and where the administrative body follows its established procedural guidelines, provides the required due process. *See id.* at 711-12, 191 P.3d at 1166-67.

In this case, as previously discussed, the IC has complied with all established procedural guidelines. Respondent is aware of the charges against him which are factually alleged in the Complaint served on November 22, 2024. Additionally, the IC provided seven (7) specific factual allegations which it used to summarize the Count allegations. In short, the Complaint includes all that is required pursuant to NRS 630.339. Additionally, both a motion to dismiss and a motion for a more definitive statement were available to Respondent.[3] But, instead of filing such a motion, Respondent filed an Answer on January 29, 2025, which included general and narrative denials to

[3] *See* NRS 622A.360(2) A party may file prehearing motions including:
(d) A motion requesting a more definite statement regarding the allegations in the charging document on the ground that there is not enough information in the charging document to formulate a defense.
(e) A motion requesting dismissal of the charging document for failure to state facts which, if true, would form a sufficient basis for discipline.

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most counts in the Complaint. Moreover, the Early Case Conference was noticed and timely held, the Prehearing Conference was conducted during which the IC identified and provided documents it intends to use at the hearing and included a witness list summarizing the nature of the testimony and qualifications, and all motion practice (whether as a right or as requested by the parties) was completed.

With respect to the reference to Nevada Rules of Civil Procedure 16.1 which requires disclosure of expert reports, due process does not require its application to administrative hearings. *See Dutchess Business Serv., Inc. v. Nevada State Board of Pharmacy*, 124 Nev. 701, 710, 191 P.3d 1159, 1165 (2008) (stating that civil procedural rules are not binding on a state agency in an adjudicatory proceeding, unless expressly adopted by the agency). Instead, a Board is governed by governing chapters and administrative process rules. In the case of the IC, the established procedural guidelines are found in Chapters 630 and 622A of the NRS and NAC, and as provided extensively herein, the IC has fully complied.

Furthermore, Respondent has adequate due process protections to defend the IC's charges for violations of NRS Chapter 630. In *Resnick v. Nevada Gaming Commission,* 104 Nev. 60, 752 P.2d 229 (1988), a casino employee filed a petition with the Eighth Judicial District Court requesting that the Court review the gaming commission's order denying him discovery, specifically an investigative report in a licensing matter. The trial Court held that it lacked jurisdiction to provide the relief requested and the casino employee appealed.

The Court determined that Mr. Resnick incorrectly assumed that because he has the right to cross-examine a witness, he had a right-of-access to all materials which he believed would assist him in this cross-examination. The Court additionally stated that although the Appellant does not have the right to discover the Board's report, he does have other rights - the right to call witnesses, offer evidence, cross-examine and impeach witnesses, and provide exhibits. Mr. Resnick did not show the Court that these protections inadequately protect his rights. More importantly, the Court opined that "[i]f the legislature intended an applicant to have access to the Board's report or to otherwise be entitled to conduct discovery, it could have so specified.

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Therefore, Resnick's argument, that NRS 463.313 should be interpreted to allow pre-hearing discovery, was without merit." *Id* at 65, 752 P.2d at 232.

Similar to the statute in *Resnick,* which the Court noted did not allow pre-hearing discovery, in this case, Respondent is limited in his administrative proceeding to discover only the evidence intended to be presented by the prosecutor at his disciplinary hearing. Also, like *Resnick*, the IC has fully complied with its discovery requirements in NRS 622A.330 and NAC 630.465. Respondent also has the right to call, examine, cross examine, and impeach witnesses. Additionally, he can introduce his own exhibits, challenge the IC's exhibits and witnesses, and offer rebuttal evidence. *See* NRS 622A.380. Lastly, as in *Resnick*, Respondent does not need access to any investigative reports to exercise these rights. *Id*

Finally, a speculative deprivation of due process claim is not ripe for consideration in a prehearing motion. *Id* at 66, 752 P.2d at 233, (citing *Doe v. Bryan*, 102 Nev. 523, 525, 728 P.2d 443, 444 (1986) (Nevada has a long history of requiring an actual justifiable controversy as a predicate to judicial relief. Moreover, litigated matters must present an existing controversy, not merely the prospect of a future problem.) With respect to Mr. Resnick's constitutional argument, the Court noted, it was "based on a purely conjectural premise – that in the future he will be denied a license and therefore deprived of property or liberty." *Id* at 65, 752 P.2d at 232. Like Mr. Resnick, any deprivation of due process is conjecture, and Respondent can argue that he was deprived of property or liberty without due process when such an argument is ripe – if his license is ultimately revoked. At that point, Respondent may have a factual foundation for an assertion that he was deprived of something. *Id* at 66, 752 P.2d at 233.

III. CONCLUSION

Respondent misinterprets and misapplies the administrative process in his request to exclude Ms. Elmquist (and Board staff) from providing testimony in this matter. Identification of Ms. Elmquist to provide testimony in this case complies with the governing statutes and

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provisions of the administrative process and this Board. Accordingly, and based on the foregoing, Respondent's Motion in Limine to Exclude Testimony from Ms. Elmquist, Mr. Diaz, Ms. LaRue and Ms. Linn must be denied in its entirety.

DATED this 5th day of June, 2025.

INVESTIGATIVE COMMITTEE OF THE
NEVADA STATE BOARD OF MEDICAL EXAMINERS

By: Deonne E. Contine

DEONNE E. CONTINE
General Counsel
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Reno, NV 89521
Tel: (775) 688-2559
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Attorney for the Investigative Committee

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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 5th day of June, 2025, I served a file-stamped copy of the foregoing **OPPOSITION TO RESPONDENT'S MOTION IN LIMINE TO EXCLUDE TESTIMONY OF JOHNNA LARUE, ERNESTO DIAZ, KORY LINN, AND STEPHANIE ELMQUIST, PA-C**, via U.S. Certified Mail, postage pre-paid, and email, to the following parties:

DAVID KAYLE MCCLEVE, PA-C
c/o LISA ZASTROW, ESQ.
Garin Law Group
9900 Covington Cross Suite 210
Las Vegas, NV 89144
lzastrow@garinlawgroup.com
Respondent

*Tracking No.:*_____

PATRICIA HALSTEAD, ESQ.
615 S. Arlington Avenue
Reno, NV 89509
phalstead@halsteadlawoffices.com
Hearing Officer

*Tracking No.:*_____

DATED this _____day of June, 2025.

_____
VALERIE JENKINS
Legal Assistant
Nevada State Board of Medical Examiners

BEFORE THE BOARD OF MEDICAL EXAMINERS
OF THE STATE OF NEVADA

* * * * *

In the Matter of Charges and Complaints Against

DAVID KAYLE MCCLEVE, P.A.-C,

Respondent.

Case No.: 24-42281-1

Hearing Dates: **September 17-18, 2025, and September 22, 2025**

FILED

JUL 31 2025

NEVADA STATE BOARD OF MEDICAL EXAMINERS

By: _____

TO: Deonne E. Contine
General Counsel
Nevada State Board of Medical Examiners
9600 Gateway Drive
Reno, Nevada 89521

David Kayle McCleve, P.A.-C
c/o Lisa Zastrow, Esq.
9900 Covington Cross Drive, Ste 120
Las Vegas, NV 89144

ORDER RESCHEDULING EVIDENTIARY HEARING

The evidentiary hearing in this matter had been scheduled for July 11, 2025; however, in light of procedural considerations in case number 23-42281-1, which also names Respondent, the parties wished for both matters to be continued and to proceed consecutively. Based upon the foregoing, and by agreement of the parties, the evidentiary hearing for the above-referenced matter is hereby rescheduled to commence on the same dates as case number 23-42281-1, which is on **September 17, 2025 through September 18, 2025, and September 22, 2025, if necessary**. Counsel shall confer and agree about how the cases will be presented in that timeframe as to which will go first in presentation along with other related logistical concerns.

Counsel for the IC and the undersigned hearing officer will appear from the Nevada State Board of Medical Examiner's Reno, Nevada office, located at 9600 Gateway Drive, Reno, Nevada 89521. Respondent and Respondent's counsel may appear from the Reno office or choose

to attend from the Las Vegas office of the Nevada State Board of Medical Examiners, located at 325 E Warm Springs Road, Suite 225, Las Vegas, Nevada 89119. Witnesses for the parties may appear in person from either location. Remote appearance requests for witnesses, if any and not stipulated to, must be made in writing **September 3, 2025** so related logistics can be addressed.

Prior to the hearing, the parties are expected to confer about appearances as well as about exhibits and stipulate to admission as they may agree. The parties are also expected to confer about facts and stipulate to any facts that need not be proven up through formal presentation of evidence.

Following the formal hearing, the undersigned hearing officer will submit to the Board written findings and recommendations pursuant to NRS 622A.300 that, pursuant to NAC 630.470, will include a synopsis of the testimony taken at the hearings as well as a recommendation on the veracity of witnesses if there is conflicting evidence or if credibility of witnesses is a determining factor. Thereafter the Board will render its decision. *See* NAC 630.470.

Should the parties deem a status conference necessary prior to the continued evidentiary hearing, they shall coordinate at least three proposed dates and times and may jointly email the undersigned hearing officer with the proposed dates and times and request a status conference and state the basis for the request.

Both parties shall keep the undersigned hearing officer apprised of each issue that has been resolved by negotiation or stipulation or of any other change in the status of this case.

DATED this 30th day of July 2025.

By: _____

Patricia Halstead, Esq.
Hearing Officer
(775) 322-2244

CERTIFICATE OF SERVICE

I certify that on this day, I personally delivered or mailed, postage pre-paid, at Reno, Nevada, a true file-stamped copy of the foregoing ORDER RESCHEDULING EVIDENTIARY HEARING addressed as follows:

Deonne E. Contine
General Counsel
Nevada State Board of Medical Examiners
9600 Gateway Drive
Reno, Nevada 89521

David Kayle McCleve, P.A.-C
c/o Lisa Zastrow, Esq.
9900 Covington Cross Drive, Ste 120
Las Vegas, NV 89144

DATED this 31st day of July 2025.

Valerie Jenkins
Signature

Valerie Jenkins
Print

Legal Assistant
Title

BEFORE THE BOARD OF MEDICAL EXAMINERS
OF THE STATE OF NEVADA

* * * * *

In the Matter of Charges and Complaints Against

DAVID KAYLE MCCLEVE, P.A.-C,

Respondent.

Case No.: 24-42281-1

Hearing Dates: **September 17-18, 2025**

FILED

SEP 15 2025

NEVADA STATE BOARD OF MEDICAL EXAMINERS

By: _____

TO: Deonne E. Contine
General Counsel
Nevada State Board of Medical Examiners
9600 Gateway Drive
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David Kayle McCleve, P.A.-C
c/o Lisa Zastrow, Esq.
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ORDER DENYING MOTION IN LIMINE TO EXCLUDE TESTIMONY OF JOHNNA LARUE, ERNESTO DIAZ, KORY LINN, AND STEPHANIE ELMQUIST, PA-C

David Kayle McCleve, P.A.-C ("Respondent"), by and through counsel Lisa J. Zasrow, has moved to exclude the testimony of the disclosed witnesses for the Investigative Committee of the Board of Medical Examiners of the State of Nevada (the "IC") save and except for Respondent himself based upon the premise that such testimony will necessarily rely upon an expert report that is part of the IC's investigation file that was not disclosed. In so arguing, Respondent relies upon NRS 622A.330, which provides for discovery of "all documents and other evidence intended to be presented by the prosecutor in support of the case and a list of proposed witnesses."

Respondent acknowledges NRS 630.336, which addresses the confidentiality of the investigatory records, but argues that the same is only applicable with regard to the investigation itself and not a subsequent prosecution. Motion, pp. 6-7, lines 24-2. According to Respondent, he

"expressly requested portions of the investigative file, specifically the Boards peer reviewer reports/expert reports" (Motion, p. 7, lines 19-20), and that the IC's failure to produce the same constitutes a deprivation of due process. Motion, p. 8, lines 12-17.

Respondent next relies upon NRS 233B.123(1), which is an evidence statute that provides that irrelevant, immaterial, and unduly repetitions evidence must be excluded, and argues that the testimony of the IC's identified peer reviewer is "inadmissible as irrelevant because the prejudicial value of the testimony outweighs its probative value." Motion, p. 9, lines 9-10. The gist of the argument being that allowing the peer reviewer to testify without disclosure of the peer reviewer's report is prejudicial. Respondent then expands upon his argument that not having the report is a denial of his due process rights.

In opposition, the IC argues that it will rely upon its peer reviewer's oral testimony and already identified and disclosed documentation. Opposition, p. 2, lines 22-27. The IC indicates that NRS 622A.330 does not extend discovery past documents and other evidence intended to be presented by the IC. According to the IC, Respondent's argument to the contrary fails to honor legally mandated statutory interpretation. Opposition, p. 4. The IC advocates that it has made proper disclosures and that, having complied with all procedural guidelines, due process has been satisfied. Opposition, p. 6. Finally, the IC relies on Resnick v. Nevada Gaming Commission, 104 Nev. 60, 752 P2d 229 (1988), in support of the position that the peer review report is not discoverable and that, absent adjudication and the ultimate loss of his license, Respondent's claim of deprivation of his license as a violation of his property rights is speculative. Opposition, pp. 7-8.

By and through Respondent's discovery request to the IC, Respondent requested "[t]he investigative file, not limited to all communications, records, affidavits and reports acquired and created as part of the investigation in this case." Motion, Exhibit 1. This was a blanket request for the investigative file, the subject of which has been litigated before the Second Judicial District Court by Respondent himself in District Court case number CV24-01206. In that matter, the Court considered the propriety of a hearing officer's order to require the investigative file to be disclosed and concluded that such an order was improper based upon the statutory mandates

related to the investigative file's confidentiality. A true and correct copy of the Order Granting Petition for Writ of Mandamus, filed in the Second Judicial District Court in case number CV24-01206 is provided herewith as **Exhibit 1** and incorporated herein by reference.

The same conclusion was reached in Second Judicial District Court case CV24-00838, whereby the Court concluded that, absent documentation that the IC intends to use from the investigative file, the investigative file is confidential and not subject to disclosure and that failure to produce the investigative file does not constitute a violation of due process. A true and correct copy of the Order Granting Petition for Writ of Mandamus, filed in the Second Judicial District Court in case number CV24-00838 is provided herewith as **Exhibit 2** and incorporated herein by reference.

The discoverability of the investigative file has now been twice considered by way of writ relief and the issue has been definitively decided in favor of the position advocated by the IC. Respondent is not entitled to any materials from the investigative file not intended to be relied upon by the IC, and attempting to frame this issue by way of excluding testimony does not result in a different outcome. This conclusion is further supported by the Nevada Supreme Court's holding in Resnick cited *supra*, which recognizes that a party does not have the right to discovery of a confidential investigative report of a board as evidenced by the fact that such a report is not excluded from confidentiality within the applicable statutory framework, in addition to the fact that adequate rights to call witnesses, offer evidence, cross-examine and impeach witnesses, and provide exhibits are afforded.

BASED UPON THE FOREGOING, Respondent's Motion in Limine to Exclude Testimony of Johnna Larue, Ernesto Diaz, Kory Linn, and Stephanie Elmquist, PA-C is DENIED.

DATED this 12th day of September 2025.

By: _____

Patricia Halstead, Esq.
Hearing Officer
(775) 322-2244

CERTIFICATE OF SERVICE

I certify that on this day, I personally delivered or mailed, postage pre-paid, at Reno, Nevada, a true file-stamped copy of the foregoing ORDER DENYING MOTION IN LIMINE TO EXCLUDE TESTIMONY OF JOHNNA LARUE, ERNESTO DIAZ, KORY LINN, AND STEPHANIE ELMQUIST, PA-C addressed as follows:

Deonne E. Contine
General Counsel
Nevada State Board of Medical Examiners
9600 Gateway Drive
Reno, Nevada 89521

David Kayle McCleve, P.A.-C
c/o Lisa Zastrow, Esq.
9900 Covington Cross Drive, Ste 120
Las Vegas, NV 89144

9171 9690 0935 0255 6846 32

DATED this 15th day of September 2025.

Signature

Mercedes Fuentes
Print

Legal Assistant
Title

EXHIBIT 1

EXHIBIT 1

FILED
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IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

NEVADA STATE BOARD OF MEDICAL EXAMINERS,

Petitioner,

v.

CHARLES B. WOODMAN, ESQ., as Hearing Officer of the Nevada State Board of Medical Examiners,

Respondent.

DAVID KAYLE MCCLEVE, P.A.-C

Intervenor.

CASE NO. CV24-01206

DEPT. NO. 7

ORDER GRANTING PETITION FOR WRIT OF MANDAMUS

The Court is in receipt of Petitioner NEVADA STATE BOARD OF MEDICAL EXAMINERS' (hereafter "the Board") *Petition for Writ of Mandamus* filed May 31, 2024; DAVID KAYLE MCCLEVE, PA-C's (hereafter "Mr. McCleve") *Brief of Amici Curiae* filed November 15, 2024[1], and the Board's Response to Brief of *Amici Curiae* filed November 20, 2024. A hearing on the Petition for Writ of Mandamus was held on

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[1] On October 28, 2024, this Court granted permissive intervention to Mr. McCleve solely for the purpose of filing an Amicus Brief in response to the Board's Petition for Writ of Mandamus.

February 20, 2025. Upon review of the pleadings, the record, and evidence and argument presented, this Court finds good cause appearing to GRANT the Board's *Petition for Writ of Mandamus*.

PROCEDURAL HISTORY AND FACTUAL BACKGROUND

On May 30, 2023, an administrative disciplinary case was initiated by the Investigative Committee of the Board ("IC") upon the filing of a formal complaint against Mr. McCleve, pursuant to NRS 630.311(2) and 630.339(1) for violations of Chapter 630 of the NRS and NAC related to his treatment and care of a patient. The hearing on the formal complaint (Administrative Case No. 23-42281-1) was set to begin on May 30, 2024.

On May 29, 2024, the hearing officer in this matter, Respondent Charles Woodman ("Respondent") issued an Order on Pre-Hearing Motions requiring the Board to produce documents it did not intend to rely upon in the hearing and therefore, would not be reviewed by the Board in imposing discipline based on his interpretation of NRS 630.336(5) that the entire investigative file of the Board is public once a formal complaint is filed against a licensee.

On May 31, 2024, the Board filed a Petition for Writ of Mandamus against Respondent seeking an order by this Court to rescind the Order on Pre-Hearing Motions and to further address statutory provisions that establish the investigative file is confidential and not discoverable.

LEGAL DISCUSSION

A. Writ Relief is Appropriate in this Case.

The requested relief is properly considered by this Court. The Respondent engaged in a statutorily granted function, and therefore, the exercise of power to order the Investigative Committee to release its investigative file in violation of NRS 630.336(4) and NRS 622A.330(2) leaves the Board and the Investigative Committee without an adequate remedy under those chapters to review the Respondent's decision prior to enforcement of the order requiring disclosure of confidential information. *See In re William J. Raggio Fam. Tr.*, 136 Nev. 172, 175 (2020); see also *State v. Dist. Ct.* (Armstrong), 127 Nev. 927, 931-32 (2011) (finding a manifest abuse of discretion in the context of a writ of a mandamus occurs where there is a clearly erroneous interpretation or application of the law).

B. Only Documents in the Board's Investigative File That Are to be Reviewed by the Board In Imposing Discipline are Public Under NRS 630.336(4) and (5).

As this matter involves an issue of statutory interpretation, this Court must first turn to the language therein. To ascertain legislative intent, a Court must begin with the text of the statute to determine its plain meaning and apply any "clear and unambiguous" language "as written." *Locker v. State,* 138 Nev. 653, 655, 516 P.3d 149, 152 (2022). In so doing, the Court needs to "avoid statutory interpretation that renders language meaningless or superfluous." *Id.*

The plain language of NRS 630.336(4) and (5) is as follows:

> 4. Except as otherwise provided in subsection 5 and NRS 239.0115, a complaint filed with the Board pursuant to NRS 630.307, all documents and other information filed with the complaint and all documents and other information compiled as a result of an investigation conducted to determine whether to initiate disciplinary action are confidential.
>
> 5. The formal complaint or other document filed by the Board to initiate disciplinary action and all documents and information considered by the Board when determining whether to impose discipline are public records.

The reference to initiation of disciplinary action in subsection 4 of NRS 630.336 is distinct from the imposition of discipline referenced in subsection 5 or NRS 630.336. NRS 630.399(1) provides that disciplinary action is initiated by the Investigative Committee of the Board filing a formal complaint. Conversely, the imposition of discipline is addressed in NRS 630.352 which states that the Board shall vote to impose discipline. The decision to initiate disciplinary action can result in a disciplinary hearing but the imposition of discipline can only occur if the Board finds, after reviewing the entire record from the disciplinary proceedings, that the charges in the complaint have been substantiated, and a violation has occurred. *See Barney v. Mt. Rose Heating & Air Conditioning,* 124 Nev. 821, 826-27, 192 P.3d 730, 734 (2008) ("Statutes are to be read in the context of the act and the subject matter as a whole....").

Based on the confidentiality distinction between the investigative information gathered to determine whether to file a formal complaint and the investigative information considered by the Board when determining whether to impose discipline, a licensee is entitled only to the documents

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from the investigative file that the prosecutor introduces at the hearing on the formal complaint as those are the investigative documents on which the Board may rely when imposing discipline.

C. The Confidentiality Provisions in NRS Chapter 630.336(4) and (5) Are Congruent with the Discovery Provisions in NRS 622A.330.

The provisions of NRS Chapter 622A apply to certain occupational regulatory bodies or professions, including the Board. Consequently, these provisions cannot be overlooked and the confidentiality provisions in NRS 630.336(4) and (5) must be read in conjunction with the discovery requirements in NRS Chapter 622A. NRS 622A.330 governs the discovery requirements in administrative procedures before regulatory bodies. It provides:

> **NRS 622A.330 Discovery; limitations on interrogatories and depositions.**
> 1. At any time after being served with the charging document, the licensee may file with the regulatory body or hearing panel or officer a written discovery request for a copy of all documents and other evidence intended to be presented by the prosecutor in support of the case and a list of proposed witnesses.
> 2. The investigative file for the case is not discoverable unless the prosecutor intends to present materials from the investigative file as evidence in support of the case. The investigative file for the case includes all communications, records, affidavits or reports acquired or created as part of the investigation of the case, whether or not acquired through a subpoena related to the investigation of the licensee.
> 3. A party may not serve any interrogatories on another party or take any depositions relating to the case, unless permitted by the regulations of the regulatory body.

NRS 622A.330(1) and (2) together as a whole elucidate that a licensee, after being served with a formal complaint, may file a written discovery request only for the evidence intended to be presented by the prosecutor at hearing. Otherwise, the materials in the investigative file for the case are not discoverable.[2]

CONCLUSION

Based on the foregoing analysis and findings, IT IS HEREBY ORDERED that the Board's *Petition for Writ of Mandamus* is GRANTED.

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[2] Reading NRS 622A.330(2) to allow discovery beyond that permitted by NRS 622A.330(1) would render 622A.330(1) meaningless in contravention to rules of statutory construction. *Locker*, 138 Nev. at 655, 516 P.3d at 152 (2022).

IT IS FURTHER ORDERED that the Order on Pre-Hearing Motions issued by Respondent in the IC's Administrative Case No. 23-42281-1, be rescinded because requiring the IC to produce materials from its investigative file that it does not intend to introduce at the hearing and will not be relied upon by the Board in imposing discipline is inconsistent with Nevada law.

DATED this 14 day of March, 2025.

EGAN K. WALKER
DISTRICT COURT JUDGE

Submitted by:

NEVADA STATE BOARD OF MEDICAL EXAMINERS

/s/ Deonne E. Contine
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EXHIBIT 2

EXHIBIT 2

FILED
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Code: 3370

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

NEVADA STATE BOARD OF MEDICAL EXAMINERS,

Petitioner,

vs.

CHARLES WOODMAN, As Hearing Officer of the Nevada State Board of Medical Examiners,

Respondent.

SAMUEL RODOLFO CHACON, M.D.,

Intervenor.

Case No.: CV24-00838

Dept. No.: 9

ORDER GRANTING PETITION FOR WRIT OF MANDAMUS

The Court is in receipt of Petitioner NEVADA STATE BOARD OF MEDICAL EXAMINERS (hereafter "the Board") *Petition for Writ of Mandamus* filed April 17, 2024; Intervenor SAMUEL RODOLFO CHACON, M.D.'s (hereafter "Dr. Chacon") *Opposition to Petition For Writ of Mandamus* filed July 24, 2024[1]; and the Board's *Reply in Support of its Petition for Writ of Mandamus* filed August 2, 2024.

Upon review of the pleadings, the record, and evidence and argument presented, this Court finds good cause appearing to GRANT the Board's *Petition for Writ of Mandamus.*

[1] On July 9, 2024, this Court granted Dr. Chacon's *Motion to Intervene.* This *Motion* was subjected to additional legal briefing which therefor extended the appliable time in which the parties could litigate via motion practice the original *Petition for Writ of Mandamus.*

PROCEDURAL HISTORY AND FACTUAL BACKGROUND

On April 17, 2024, the Board filed its *Petition for Writ of Mandamus* against RESPONDENT CHARLES WOODMAN (hereafter "Respondent"), seeking a writ ordering the Respondent to rescind a Summary Prehearing Order filed April 11, 2024. The Summary Prehearing Order compelled the disclosure of the Board's Investigative Committee's (hereafter "IC") confidential investigative file. The writ requested by the Board is to prevent an alleged violation by the Investigative Committee regarding statutory provisions that allegedly establish that an investigative file is confidential and not discoverable, except under extremely narrow circumstances.

The underlying Administrative Case against Dr. Chacon was initiated by the Board upon the filing of an Order for Summary Suspension by the IC pursuant to NRS 630.326 on September 5, 2023. *See Pet.* Exhibit 1. Later, a four (4) count Formal Complaint was filed concurrently with the Order for Summary Suspension on September 5, 2023, alleging violations by Dr. Chacon of the Medical Practice Act ("MPA") related to his care and treatment of a patient. *See Pet.* Exhibit 2.

A Show Cause Hearing pursuant to NRS 630.326(2) then began on October 12, 2023, and was continued on December 18, 2023. The primary reason for the hearing was to determine if there was a reasonable basis to maintain the suspension pending the outcome of a formal hearing on the Formal Complaint. The summary suspension hearing was concluded on December 18, 2023, after Dr. Chacon called an expert witness supportive of his defenses and testified on his own behalf. On January 19, 2024, the Hearing Officer issued his *Finding Of Fact, Conclusions Of Law, And Recommendation To The Board On Continuation Of The Summary Suspension Of Dr. Chacon's License To Practice Medicine In Nevada Pending Hearing Of The Complaint On File* ("January 19, 2024, Recommendation"). *Oppo.* Ex. F.

On March 27, 2024, the IC filed its First Amended Complaint in the Administrative Case alleging eight (8) total counts for violations of the MPA. *See Pet.* Exhibit 6. On April 3, 2024, attorneys for Dr. Chacon requested that Respondent review their request to produce the IC's investigative file in an email to the Respondent and Counsel for the IC. Counsel for the IC renewed a previous objection to the request for the release of the investigative file, stating that such a file is confidential pursuant to NRS 630.336(4) and NRS 622A.330(2).

On April 10, 2024, a prehearing conference was conducted pursuant to NAC 630.465(1) in preparation for the formal hearing addressing the First Amended Complaint in the Administrative Case, set to begin on May 13, 2024, at 9:00 a.m. Pursuant to NAC 630.465(3) the prehearing conference is the last day to exchange documents and witness lists. Additionally, a prehearing conference statement identifies witnesses, their qualifications, and a summary of their testimony, as well as a list of the documents that may be introduced at the hearing, and any documents or witnesses not provided to each party by the time of the prehearing conference may not be introduced or admitted at the hearing unless good cause is shown or required for rebuttal evidence. *See* NAC 630.465(3).

It is alleged that within Dr. Chacon's prehearing conference statement, "Exhibit 24" is listed as the IC's investigative file to be provided by the IC in allegedly direct conflict with governing statutes. It is further alleged the Respondent unlawfully issued a "Summary Prehearing Order" in the Administrative Case in the late afternoon of April 11, 2024, which ordered the IC to produce any information not yet produced as requested by Dr. Chacon's counsel by no later than Wednesday, April 17, 2024. It is alleged that such an order is in contradiction of NRS 622A.330(2), and NRS 630.336(4). The instant *Petition* followed.

LEGAL AUTHORITY

Pursuant to NRS 34.160, "a writ of mandamus may be issued to compel the performance of an act of a person." Such a writ is available from a district court to "compel the performance of an act which the law especially enjoins as a duty resulting from an office." NRS 34.160; *Int'l Game Tech., Inv. v. Second Judicial Dist. Court*, 124 Nev. 193, 197 (2008); *Salaiscooper v. Eighth Judicial Dist. Court*, 117 Nev. 892 (2001). However, the issuance of a writ of mandamus to compel the action of an officer must be for a duty resulting from the office and the action itself must be required by law. *State ex rel. McGuire v. Waterman,* 5 Nev. 323 (1869). The writ of mandamus should never be granted in anticipation of an omission of duty; it should only issue after actual default of the duty. *Piper v. Gracey,* 11 Nev. 223 (1876). Furthermore, "[w]rit relief is an extraordinary remedy that is only available if a petitioner does not have a plain, speedy and adequate remedy in the ordinary course of law." *In re William J. Raggio Fam. Tr.*, 136 Nev. 172, 175, 460 P.3d 969, 972 (2020); *see also* NRS 34.170. Thus, the party requesting a writ must show that it is entitled by law to the relief it seeks. *State v. Daughtery,* 48 Nev. 299 (1924).

DISCUSSION

In the instant case, the Board seeks for this Court to issue a Writ of Mandamus compelling Respondent to rescind his Summary Prehearing Conference Order in the Administrative Case, which required the Investigative Committee ("IC") to produce its investigative file.[2] Dr. Chacon asserted within his *Opposition* that the plain language of NRS 630.336(5) is unambiguous entitling him to the investigative file, and that the initiation of the disciplinary action precluded confidentiality. Additionally, Dr. Chacon alleges that confidentiality of the investigative file is not absolute, and that Due Process is satisfied through production of investigative files. However, the Court finds that such arguments by Dr. Chacon are belied by the plain language of the applicable statute, and Nevada Jurisprudence.

I: The Investigative Files Are Confidential

As this matter involves an issue of statutory interpretation, this Court must first turn to the statute in question and the language therein. It is recognized that the goal of statutory interpretation "is to give effect to the Legislature's intent." *Doolin v. Dep't of Corr.*, 134 Nev. 809, 811 (Nev. App. 2018). To ascertain legislative intent, a Court must begin with the text of the statute to determine its plain meaning and apply any "clear and unambiguous" language "as written." *Locker v. State*, 138 Nev. Adv. Op. 62, 516 P.3d 149, 152 (2022). In so doing, the Court needs to "avoid statutory interpretation that renders language meaningless or superfluous." *Id.*

For these reasons, "when a statute 'is clear on its face, a court cannot go beyond the statute in determining legislative intent." *State v. Lucero*, 127 Nev. 92, 95, 249 P.3d 1226, 1228 (2011) (internal citations omitted). Moreover, "Where the language of a statute is plain and unambiguous, and its meaning clear and unmistakable, there is no room for construction, and the courts are not

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[2] As a matter of law, this Court finds that the requested relief is properly considered by this Court. The Respondent is engaging in a statutorily granted function, and therefore, the exercise of power to order the investigative committee in the underlying matter to release its investigative file in alleged violation of NRS 630.336(4) and NRS 622A.330(2) leaves the Board and the investigative committee without an adequate remedy under those chapters to review the Respondent's decision prior to the order requiring disclosure of confidential information. *See In re William J. Raggio Fam. Tr.*, 136 Nev. 172, 175 (2020); *see also State v. Dist. Ct. (Armstrong)*, 127 Nev. 927, 931-32 (2011) (finding a manifest abuse of discretion in the context of a writ of a mandamus occurs where there is a clearly erroneous interpretation or application of the law).

permitted to search for its meaning beyond the statute itself." *Erwin v. State*, 111 Nev. 1535, 1538–39, (1995) (*citing Charlie Brown Constr. Co. v. Boulder City*, 106 Nev. 497, 503 (1990)).

Likewise, in *Dutchess Business Services Inc. v. Nevada State Board of Pharmacy*, the Supreme Court of Nevada recognized that "[w]hen the language of a statute is plain and unambiguous, and its meaning is clear and unmistakable, there is no room for construction, and the courts are not permitted to search for its meaning beyond the statute itself," but instead will "[n]onetheless *defer to an agency's interpretation of its governing statutes or regulations if the interpretation is within the language of the statute*." 124 Nev. 701, 709 (2008) (emphasis added). In analyzing NRS 630.336 (the statute at issue), the Nevada Supreme Court has held that the plain language of NRS 630.336 is unambiguous and that the Board's interpretation of NRS 630.336 was entitled to deference by a reviewing court. *Sarfo v. Bd. of Med. Examiners*, 134 Nev. 709, 714-15 (2018).

It is important to note that the Nevada Supreme Court has recognized that when "the words of the statute have a definite and ordinary meaning," a court will not look beyond the plain language of the statute, "unless it is clear that this meaning was not intended." *Harris Assocs. v. Clark Cnty. Sch. Dist.*, 119 Nev. 638, 641–42 (2003) (internal citations omitted) (emphasis added). Critically, the Nevada Supreme Court has provided some guidance to district courts, holding that "When construing an ambiguous statutory provision, this court determines the meaning of the words used in a statute by 'examining the context and the spirit of the law or the causes which induced the Legislature to enact it [and] the entire subject matter and policy may be involved as an interpretive aid.' " *Leven v. Frey*, 123 Nev. 399, 405 (2007) (internal citations omitted).

Correspondingly, the Supreme Court has held a district court must "strive to the extent possible to interpret a statute in a matter that avoids 'unreasonable or absurd result[s]...'" *Platte River Ins. Co. v. Jackson*, 137 Nev. 773, 778 (2021) (*citing Great Basin Water Network*, 126 Nev. at 196, 234 P.3d at 918); *see also Allstate Ins. Co. v. Fackett*, 125 Nev. 132, 138, (2009); *Young v. Nev. Gaming Control Bd.*, 136 Nev. 584, 588 (2020) (equating an absurd result with one not intended by the Legislature). If the "literal, plain meaning interpretation" leads to an unreasonable or absurd result, this court may look to other sources for the statute's meaning. *Newell v. State*, 131 Nev. 974,

977 (2015). In its analysis of an ambiguous statutory provision, a reviewing Court is bound to ensure that the statute is interpreted in accordance "with what reason and public policy would indicate the legislature intended." *Id.*

As previously recognized, the statue in question is NRS 630.336. The primary issue within this matter, is the alleged distinction between subsection NRS 630.336(4) relied on by the Board, and subsection NRS 630.336(5) relied on by Dr. Chacon. The plain language of NRS 630.336(4) and (5) is as follows:

> 4. Except as otherwise provided in subsection 5 and NRS 239.0115, a complaint filed with the Board pursuant to NRS 630.307, all documents and other information filed with the complaint and all documents and other information compiled as a result of an investigation conducted to determine whether to initiate disciplinary action are confidential.
>
> 5. The formal complaint or other document filed by the Board to initiate disciplinary action and all documents and information considered by the Board when determining whether to impose discipline are public records.

NRS 239.0115, as referenced in NRS 630.336(4), creates an exception to the strict confidentiality in NRS 630.366(4) when it allows a person to ask the District Court for permission to obtain the otherwise confidential investigative file after thirty (30) years have passed since the initiation of the investigation.

In addition to the plain language of NRS 239.0115, the legislative history demonstrates that the confidentiality imposed by NRS 630.336(4) was a paramount concern, and that any exception to the confidentiality imposed therein was to be extremely limited. Of import, when the bill enacting NRS 239.0115 was heard, the Nevada State Archivist noting the confidentiality of an investigative file, testified:

> We are looking at a record being closed forever and no one seeing it or it being opened too soon. We do not want individual rights of privacy compromised or third-party concerns, particularly correction or state mental institute records. This could mean psychiatrists, doctors, snitches or people, other than the media, seeing the record and bringing personal vendettas against people if they get the information too soon. . . . With this statute, we tried to include a period that addresses both rights and access to public information for researchers and others without compromising rights of individuals in any acceptable level of privacy. If records were available at ten years, it could raise issues of individuals being compromised with information in these records.

Minutes of the Senate Committee on Government Affairs, (February 26, 2007, Page 27) (emphasis added).

Such explicit rational by the legislature distinctly demonstrates that the legislature contemplated the tension between patient confidentiality and the access to public information. Ultimately, the legislature struck a balance between the two competing forces within NRS 239.0115 by instituting its 30-year time limitation.

Additionally, the Nevada Supreme Court has also addressed the tension between patient confidentiality and the right to access to public information; ultimately holding that patient privacy was vital and that it would defer to the Board's reasonable interpretation of the plain language of NRS 630.336(4). *See Sarfo*, 134 Nev. at 714. The Court also reasoned that such deference to the Board's interpretation of NRS 630.336(4) was supported by the fact that disclosing the investigative file may make patients hesitant to report malpractice without the protection of confidentiality, which cut against public policy. *See Sarfo*, 134 Nev. at 714.

As such, the plain language of NRS 630.336(4) unambiguously ensures that all documents and other information filed with the complaint and all documents and other information compiled as a result of an investigation conducted to determine whether to initiate disciplinary action are to be confidential. The plain language of the statute is likewise supported by the statutory history of the statute and its corresponding sections, as well as Nevada jurisprudence. As such, this Court finds that the investigative file in question is presumed to be confidential unless one of the very narrow exceptions applies such as those enumerated in NRS 630.336(5) as the 30-year window has not yet passed as required by NRS 239.0115.

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Significantly, NRS 630.336(5) addresses the information from the investigative file that is introduced as evidence at the hearing in the contested case and holds that such information is not confidential if such information is used within a formal complaint hearing. The Board conceded that pursuant to NRS 630.336(5), when investigative materials are introduced as evidence in a formal complaint proceeding, they become part of the public record (and are no longer confidential) as they will be considered by the adjudicating members of the Board when determining whether a statutory violation has occurred and if discipline should be imposed pursuant to NRS 630.352. (emphasis added). However, the Board countered by emphasizing that such an exception did not apply in this matter as the proceedings have not reached the "formal" stage as alleged by Dr. Chacon. The Court finds such an assertion by the Board to be supported by Nevada law.

As an initial matter, NRS 630.352(1) establishes the procedure by which the Board must deliberate and consider any findings of fact and conclusions of law following the hearing to adjudicate disciplinary cases and render discipline in accordance with NRS 630.352(4), which outlines the actions the Board can take against a licensee. Additionally, the Board concedes that the record of the formal complaint is reviewed and discussed in a public meeting under Nevada's Open Meeting Law. *See* NRS 622.320(2) (Board decisions related to disciplinary action are subject to the provision of NRS 241.020); *see also* NRS 630.336(2) (formal hearings on any charges heard by the Board, records of formal hearings, and orders or decisions of the case are public).

The Board also recognized that the documents and information considered by the Board when determining whether to impose discipline include those documents from the investigative file admitted at the hearing on a formal complaint, and that such are not confidential due to such actions being public. However, the Board asserted that the information reviewed by the adjudicating Board members does not include any of the IC's investigative file, and that such information is not used in prosecuting the violations of NRS 630 because they are not part of the record of the formal complaint as required by the plain language of 630.336(5).

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Indeed, the legislature contemplated such a distinction in 2011 when it amended 630.336(5) to include the word "formal" within the statute. During the 2011 Legislative session, the Board sought to amend NRS 630.336(5) to clarify the confidentiality distinction between a complaint filed by a person pursuant to NRS 630.307 and a complaint filed pursuant to NRS 630.399. Board Executive Director Cooper noted in his testimony that, "the investigative complaint is a confidential report that starts an investigation...[and that] this information needs to remain confidential to prevent unscrupulous and nefarious competitors from loading up complaints on their competitors." Minutes of the Senate Committee on Commerce, Labor and Energy, (February 23, 2011, Page 29). The word "formal" in NRS 630.336(5) was added to clarify that the formal complaint and other documents related thereto are public records while the investigative file, which includes the complaint filed pursuant to NRS 630.307, remains confidential unless the Board intends to introduce certain documents in the investigative file into evidence during a hearing on a formal complaint. The clarification is consistent with NRS 630.339 which allows for filing of a formal complaint to prosecute a violation of the MPA.

As such, based on the confidentiality distinction between the complaint filed by a person to initiate an investigation and the formal complaint filed to initiate disciplinary action by the adjudicating members of the Board, a licensee is entitled only to the documents from the investigative file that the prosecutor intends to use at the hearing after a formal complaint is filed and the licensee makes a request for such documents under NRS 622A.330(1) and as otherwise required by NAC 630.465.

In this case, Dr. Chacon's license to practice medicine was suspended pursuant to NRS 630.326 which requires a show-cause hearing to determine if the licensee will remain suspended pending the conclusion of a formal complaint against the licensee which must be filed no later than thirty (30) days following the issuance of the suspension. See NRS 630.326(2) (The Board shall hold a hearing not later than 60 days after the date on which the order is issued to determine whether a reasonable basis exists to continue the suspension of the license pending the conclusion of a hearing to consider a formal complaint against the licensee).

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The statutory authority by which the IC suspended Chacon's license to practice medicine is clearly different from the formal discipline contemplated in NRS 630.336(5). NRS 630.352(4)(d) allows the Board to suspend a license, but only following a formal hearing and the adjudication by the Board that the licensee has violated the medical practice act. Moreover, NRS 630.352(1) precludes any member of the IC, who participated in any determination instituting a formal complaint, from adjudicating the formal complaint and imposing discipline. The record related to the summary suspension is part of the record which will be reviewed by the Board's adjudicating members following the prosecution of the formal complaint related to the summary suspension.

Due to these reasons, the Court finds that to read NRS630.336(5) to eliminate the confidentiality of the investigative file delineated in NRS 630.336(4) when such information contained within the investigative file is not being used in a formal prosecuting action is not the legislatures' intent. Moreover, to grant Dr. Chacon's discovery request in this case would potentially open the door to theoretically allow any person to request, and be entitled to, a complete copy of the investigative file pursuant to NRS 239.0107. Such a result is legally absurd, as it would allow extremely private healthcare-related information to be widely accessed with almost little to no oversight, an outcome that the legislature was attempting to avoid.

As such, this Court finds that the plain language of NRS 630.336(4) mandates that the IC's investigative file is confidential. The Court also finds that Dr. Chacon is not able to access the investigative file as there has not been a formal proceeding against him as required by NRS 630.336(5) to potentially negate the presumption of confidentiality. Such a finding is consistent not only with the plain language of the applicable statute, but also supported by the Board's interpretation of the statue and the applicable legislative history. *See Sarfo v. Bd. of Med. Examiners*, 134 Nev. 709, 714-15 (2018). Therefore, this Court hereby GRANTS the Board's *Petition for Writ of Mandamus.*

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II: Due Process Does Not Require Disclosure of the Investigative File

The Board conceded that Dr. Chacon is entitled to due process in a "Formal Board Disciplinary Proceedings." *Reply,* pg. 9:11 (*citing Dutchess Bus. Servs., Inc. v. Nevada State Bd. of Pharmacy*, 124 Nev. 701, 711 (2008) ("Although proceedings before administrative agencies may be subject to more relaxed procedural and evidentiary rules, due process guarantees of fundamental fairness still apply.")). Additionally, the Nevada Supreme Court has explained that in an administrative proceeding, "it is the opportunity to prepare a defense that defines due process." *Id.* at 712 (*citing Nevada State Apprenticeship Council v. Joint Apprenticeship & Training Comm.*, 94 Nev. 763, 765 (1978)). Thus, a process that ensures that a licensee is noticed of the charges against him and the factual bases underlying them, and where the administrative body follows its established procedural guidelines, provides the required due process. *See id.* at 711-12.

Accordingly, the Court finds that the Board has complied with all established procedural guidelines and that Dr. Chacon was provided due process. *See id.* First, the charges against Dr. Chacon are factually alleged in accordance with NRS 630.339(1) in the First Amended Complaint served on March 27, 2024. Additionally, a Prehearing Conference on this matter was held on April 10, 2024. Prior to the conference, the IC filed its Prehearing Conference Statement on April 5, 2024, and Chacon filed his Prehearing Conference Statement on April 10, 2024, and all documents were exchanged in accordance with NAC 630.465. As such, Chacon has received adequate due process protections to defend the IC's charges for violations of NRS Chapter 630. *Id.* at 712.[3]

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[3] Additionally, unfettered pre-hearing discovery is disfavored by the Nevada Supreme Court. *See Resnick v. Nevada Gaming Commission,* 104 Nev. 60 (1988). Within *Resnick*, the Supreme Court held that a petitioner who was seeking the entire investigative file by the State Gaming Control Board regarding his license suspension was not entitled to the investigative report, but instead was afforded due process as he had the right to call, examine, cross-examine, and impeach witnesses during the applicable hearing. Importantly the Supreme Court noted that "[i]f the legislature intended an applicant to have access to the Board's report or to otherwise be entitled to conduct discovery, it could have so specified. Therefore, Resnick's argument, that NRS 463.313 should be interpreted to allow pre-hearing discovery, was without merit." *Id.* at 65. Much like the statute being analyzed within *Resnick*, NRS 630.336 does not entitle Dr. Chacon to unfettered discovery, as such discovery was not specified within NRS 630.336. To the contrary, NRS 630.336 holds that the investigative file is confidential unless relied upon within a formal proceeding. However, such a proceeding has not yet happened within this matter as set forth in detail above. Moreover, Dr. Chacon is entitled to o call, examine, cross-examine, and impeach witnesses during his disciplinary hearing. *See* NRS 622A.380. Finally, a speculative deprivation of due process claim is not ripe for consideration in a prehearing motion. *Resnick*, at 66 *(citing Doe v. Bryan,* 102 Nev. 523, 525 (1986) (Nevada has a long history of requiring an actual justifiable controversy as a predicate to judicial relief... [and] litigated matters must present an existing controversy, not merely the prospect of a future problem.)).

CONCLUSION

Due to the above analysis and findings, IT IS HEREBY ORDERED that the Board's *Petition for Writ of Mandamus* is hereby GRANTED.

IT IS FURTHER ORDERED that Respondent is to rescind his Summary Prehearing Conference Order in the Administrative Case requiring the Investigative Committee to produce its entire investigative file, as such an Order cut against Nevada Law.

IT IS SO ORDERED.

DATED this 7th day of October 2024.

DISTRICT JUDGE

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of the Second Judicial District Court of the State of Nevada, County of Washoe, and I electronically filed the foregoing with the Clerk of the Court electronic filing system, which will send notice of electronic filing to the following:

CHARLES WOODMAN, ESQ. for CHARLES B. WOODMAN
ERIC STRYKER, ESQ. for SAMUEL CHACON, MD
IAN CUMINGS, ESQ. for NEVADA STATE BOARD OF MEDICAL EXAMINERS

DATED this 7th day of October 2024.

Judicial Assistant