BEFORE THE NEVADA STATE BOARD OF OSTEOPATHIC MEDICINE

IN THE MATTER INVOLVING MILES B. FINE, D.O., LICENSE NO. 686, RESPONDENT.	CASE NO. AD 10090004

NV STATE BOARD OF OSTEOPATHIC MEDICINE
SEP 29 2010
FILED

COMPLAINT

Pursuant to the provisions of Chapters 233B, 622A, and 633 of the Nevada Revised Statutes, as well as NAC Chapter 633, and by virtue of the authority vested in it by said statutes and regulations, Daniel K. Curtis, D.O., the Investigative Board Member ("IBM") of the Nevada State Board of Osteopathic Medicine ("Board") in this matter, having a reasonable basis to believe that MILES FINE, D.O., hereinafter referred to as "Respondent" or "Dr. Fine," has violated the provisions of said chapters, hereby issues this formal Complaint, stating the Investigative Board Member's charges and allegations, as follows:

I.

COUNT ONE (JURISDICTION)

1. That Respondent is licensed in active status to practice osteopathic medicine in the state of Nevada; and at all times alleged herein, was so licensed by the Board of Osteopathic Medicine of the State of Nevada pursuant to the provisions of Chapter 633 of the Nevada Revised Statutes. Respondent has practiced consistently and continuously within Clark County, Nevada.

2. That pursuant to NRS 633.151, "[t]he purpose of licensing osteopathic physicians and physician assistants is to protect the public health and safety and the general welfare of the people of this State. Any license issued pursuant to this chapter is a revocable privilege, and a holder of such a license does not acquire thereby any vested right."

3. That NRS 633.511(1) provides that unprofessional conduct is a ground for the initiation of disciplinary proceedings by this Board.

4. That NRS 633.131(1) defines "unprofessional conduct," in part, as follows:

> (f) Engaging in any:
> (1) Professional conduct which is intended to deceive or which the board by regulation has determined is unethical;

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(2) Medical practice harmful to the public or any conduct detrimental to the public health, safety or morals which does not constitute gross or repeated malpractice or professional incompetence. . . .

(k) Willful disobedience of the regulations of the State Board of Health, the State Board of Pharmacy or the State Board of Osteopathic Medicine . . . .

(m) Failure of a licensee to maintain timely, legible, accurate and complete medical records relating to the diagnosis, treatment and care of a patient . . .

(o) Making or filing a report which the licensee knows to be false.

5. That pursuant to NAC 633.350(9), a licensee engages in unethical conduct if he engages in any conduct that the Board determines constitutes an unfitness to practice osteopathic medicine; and pursuant to NAC 633.350(3), a licensee engages in unethical conduct if he willfully makes and files false reports, records, or claims in the licensee's osteopathic medicine practice.

6. That NRS 633.511(5) provides that professional incompetence, malpractice, and gross malpractice are grounds for the initiation of disciplinary proceedings against an osteopathic physician by this Board.

7. That "gross malpractice" is defined in NRS 633.041 as follows: malpractice where the failure to exercise the requisite degree of care, diligence or skill consists of:

3. Willful disregard of established medical procedures; or
4. Willful and consistent use of medical procedures, services or treatment considered by osteopathic physicians in the community to be inappropriate or unnecessary in the cases where used.

8. That NRS 633.111 defines professional incompetence as including the lack of ability to safely and skillfully practice osteopathic medicine.

9. That pursuant to NAC 633.370, if a medical competency examination determines that a licensee is not competent to practice osteopathic medicine with reasonable skill and safety to patients, the Board will consider that determination to constitute a rebuttal presumption of profession incompetence with regard to the licensee.

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10. That NRS 633.651 states, in part, as follows:

1. If the Board finds a person guilty in a disciplinary proceeding, it shall by order take one or more of the following actions:

a. Place the person on probation for a specified period or until further order of the Board.

b. Administer to the person a public reprimand.

c. Limit the practice of the person to, or by the exclusion of, one or more specified branches of osteopathic medicine.

d. Suspend the license of the person to practice osteopathic medicine for a specified period or until further order of the Board.

e. Revoke the license of the person to practice osteopathic medicine.

f. Impose a fine not to exceed $5,000 for each violation,

g. Require supervision of the practice of the person,

h. Require the person to perform community service without compensation,

i. Require the person to complete any training or educational requirements specified by the Board,

j. Require the person to participate in a program to correct alcohol or drug dependence or any other impairment.

The order of the Board may contain such other terms, provisions or conditions as the Board deems proper and which are not inconsistent with law.

2. The Board shall not administer a private reprimand.

II.

COUNT TWO (CARE & TREATMENT OF PATIENT B – "J.G.")

11. That the allegations raised in Paragraphs 1 through 10, inclusive, of Count I, Jurisdiction, of this Complaint are incorporated herein by this reference as though such allegations were more fully set forth herein.

12. That Patient B is a male who was approximately 31 years of age at the time of his accident and treatment by Respondent. Respondent performed two surgeries on this patient as a result of a workman's compensation injury occurring in early January 2008. Patient B was first seen by Concentra Medical Center for the injuries. An x-ray, "nasal bone series," was done by Lake Mead Radiologists on January 14, 2008 for Concentra Medical Center, and the findings indicate that the "examination demonstrates a normal appearance of the frontal, ethmoid, sphenoid, and maxillary sinuses. No fractures are identified." The impression was "nasal bone series within normal limits."

13. That Patient B was seen on January 14, 2008, by Respondent, whose specialty is

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Otolaryngology. Respondent provided the Board with a photocopy of his medical records on this patient, including one page, presumably the only document created by patients and/or the Respondent on the first initial visit, which does not list insurance coverage, address, phone number, next of kin, employer, and many other such items/information that is customarily requested by physicians in good standing in the Las Vegas, Clark County, Nevada community when examining/seeing patients for the first time. According to the "Past E.N.T. History," noted on this one-page document, the patient did not have problems with otorrhea, hearing, post-nasal drip, obstruction, and/or sinusitis. The Respondent did perform a bilateral endoscopic nasal examination on that same date.

14. That Respondent ordered a CT Scan which was accomplished on January 15, 2008; and the scan revealed contour deformity of the nasal bones consistent with a nasal fracture, soft tissue swelling, deviated nasal septum, nasal turbinates which were not enlarged, small partial concha bullosa, and mild focal mucosal thickening along the floor of the right maxillary sinus. The report documents mild mucoperiosteal prominence seen within the sphenoid and ethmoid air cells, but that the frontoethmoidal and sphenoethmoidal recesses are preserved. The impression includes that Patient B suffered from a depressed left nasal bone fracture, enlargement of the membranous portion of the nasal septum, deviation of the nasal septum, and mild chronic sinus disease. Surgery was performed thereafter on January 18, 2008.

15. That although requested by the Board to provide the "full and complete" medical records on this Patient B, the operative report for the January 18, 2008, procedure was not found within the documents provided directly to the Board by Respondent's office with a certificate of compliance from Respondent's records custodian.

16. That a photocopy of the operative report was, however, obtained and indicates the following post-operative diagnoses: acute naso-ethmoid fracture, nasal septal abscess/hematoma; acute and chronic sinusitis of the maxillary, ethmoid, and sphenoid sinuses; concha bullosa (bilateral); and bilateral interior nasal turbinate hypertrophy with obstruction. It was noted in the report that the patient tolerated the procedure "well" and was

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taken to the "recovery room in satisfactory condition." There is no mention in the operative report that a second surgery was necessary to complete the above-mentioned procedures. The "procedures" section of the operative report is blank, and simply does not identify any "procedures" as being performed.

17. That contradictions and/or inconsistencies exist between the Concentra Medical Center records, the CT Scan report, and the January 18, 2008, operative report. For example, the CT Scan indicate only mild focal mucosal thickening along the floor of the right maxillary sinus and mild mucoperiosteal prominence within the sphenoid and ethmoid air cells, whereas Dr. Fine's operative report indicate "acute and chronic sinusitis of the maxillary, ethmoid, and sphenoid sinuses." The CT Scan report indicates only "mild chronic sinus disease" and Concentra's medical records indicate "normal appearance of the frontal, ethmoid, sphenoid and maxillary sinuses" as well as "nasal bone series within normal limits." Additionally, the one document from Respondent of Patient B's first visit indicates no prior history/problems with sinus disease.

18. That the patient was subsequently seen by Dr. Ryan Mitchell. Dr. Mitchell noted on his form, dated March 10, 2008, that the patient has "no hx [history] of sinus probs [problems]."

19. That, although the patient had no history of sinus problems and only "mild chronic sinus disease" according to the CT Scan taken on January 15, 2008, Dr. Fine's consent incorrectly and improperly indicates that the patient was suffering from chronic ethmoid sinusitis, chronic sphenoid sinusitis, and nasal turbinate hypertrophy.

20. That, although the patient had no history of sinus problems and "only mild chronic sinus disease" according to the CT Scan taken on January 15, 2008, Dr. Fine's consent for the surgery on January 18, 2008, indicates that he knowingly, intentionally, and willfully planned to perform the following surgeries by noting the same on the consent form: endoscopic sinus surgery with bilateral maxillary antrostomy with debridement, bilateral ethmoidectomies, bilateral sphenoidectomies, bilateral concha bullosa, and bilateral submucosal resection of the nasal turbinates when such procedures were not medically

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necessary at that time.

21. That Respondent operated on Patient B again on January 22, 2008. It is noted in the January 22, 2008, operative report that the "patient who had sinus surgery [and w]hile recovering, he began to bleed excessively. Multiple attempts at conservative treatment were attempted, yet were not adequate to stop the bleeding. Therefore, he was brought to the operating room" to undergo additional procedures. There was only one office note between the surgery date of January 18, 2008 with a discharge date of January 19, 2008, and the second surgery on January 22, 2008. That one office visit was on January 21, 2008. Dr. Fine's office note of January 21, 2008, contradicts, and is inconsistent with, the operative report statement that numerous attempts at "conservative treatment were attempted." Those notes simply indicate that the patient did not take his antibiotic until Sunday (one dose) at which time, Dr. Fine allegedly "reinforced" to Patient B that he "could die if he doesn't take his" antibiotics. Dr. Fine's notes do not evidence "multiple attempts at conservative treatment." As a matter of fact, Dr. Fine's note of "endoscopic debridement operative report" of January 21, 2008, indicates that the patient was to return in two weeks for further debridement and sponge removal.

22. That the diagnosis noted in Respondent's preoperative report dated January 22, 2008, is posterior expistaxis bilaterally, i.e., nose bleeding from the back part of the nose. Respondent's operative report indicated the following were accomplished: endoscopic sinus surgery with left control of expistaxis, endoscopic sinus surgery with right control of epistaxis, endoscopic sinus surgery with left maxillary antrostomy with debridement, endoscopic sinus surgery with right antrostomy with debridement, endoscopic sinus surgery with left anterior ethmoidectomy, and endoscopic sinus surgery with right anterior ethmoidectomy.

23. That although Respondent indicated that he performed endoscopic sinus surgeries on January 22, 2008, as discussed in the preceding paragraph, such procedures had already been performed on Patient B during the January 18, 2008, surgery and such procedures were simply not indicated for the second surgery and/or were not necessary to stop Patient B's nose bleed.

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24. That after the two surgeries performed by Respondent, Patient B continued experiencing problems including but not limited to nose bleeds, blockage, and multiple dry crusts in his nose, and sought treatment by other physicians. The treatment by a subsequent physician indicated that Patient B had a near total resection and/or removal of the middle and inferior turbinates and had an ulceration that was healing on the nasal septum on the left side. The nose bleed apparently occurred and continued to occur due to the removal of the middle and inferior turbinates.

25. That Respondent performed unnecessary surgical procedures during the first operation on January 18, 2008, which resulted in complications and the need for a second surgery on January 22, 2008; and furthermore, Respondent billed for procedures allegedly performed on January 22, 2008, when such sinus procedures could not have been performed.

III.

COUNT THREE (ALLEGED VIOLATIONS)

26. That the allegations raised in Paragraphs 1 through 10, inclusive, of Count I, Jurisdiction, and Paragraphs 11 through 25, inclusive of Count Two (Care & Treatment of Patient B), of this Complaint are incorporated herein by this reference as though such allegations were more fully set forth herein.

27. That because of Respondent's willfully making and filing a false report concerning the actual treatment rendered to Patient B and engaging in conduct that constitutes an unfitness to practice osteopathic medicine in the State of Nevada by performing unnecessary surgeries resulting in damages to the patient, Respondent has violated NAC 633.350(3) and (9), and discipline is warranted with regards to such unethical conduct committed during the treatment of Patient B.

28. That because of Respondent engaging in conduct which is intended to deceive, i.e., performing unnecessary surgery; because of Respondent engaging in a medical practice that is harmful and detrimental to the public; because of Respondent's failure to maintain accurate reports and/or medical records; and because of Respondent's failure to provide

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accurate reports and/or medical records to the Board, Respondent has engaged in unprofessional conduct as defined in pursuant to NRS 633.131; and discipline is warranted with regards to such unprofessional conduct concerning the treatment of Patient B.

29. That performing unnecessary surgery is below the standard of care owed to patients in this medical community, is a total disregard of established medical practice and procedures, and is gross malpractice, casting the practice of osteopathic medicine in the State of Nevada in a bad light, for which discipline is warranted concerning that treatment rendered by Dr. Fine to Patient B.

IV.

PRAYER

WHEREFORE, the Investigative Member of the Board of Osteopathic Medicine prays as follows:

1. That the Nevada State Board of Osteopathic Medicine schedule a hearing pursuant to the Board's authority found in NRS and NAC chapters 633, as well as NRS chapter 233B, NRS chapter 622, and NRS chapter 622A, and affirmatively find that the public health, safety, and welfare require action against Respondent, Miles Fine, D.O., and his license to practice Osteopathic Medicine in the State of Nevada;

2. That, pursuant to NRS 633.651, Respondent, Miles Fine, D.O., be publicly reprimanded and/or the license of said Respondent be revoked, suspended, or limited, or that Dr. Fine be placed on probation with conditions and terms as the Nevada State Board of Osteopathic Medicine may deem just and proper and which are not inconsistent with law, and/or fined in an amount not to exceed $5,000 per violation, and/or require supervision of his medical practice, and/or require the Respondent to perform community service without compensation, and/or require the Respondent to complete any additional training or educational requirements specified by the Board;

3. That Respondent Miles Fine, D.O., be ordered to pay all reasonable attorney's fees

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and costs associated with the investigation and prosecution of this matter, and all reasonable investigative fees and costs associated with the administrative and disciplinary proceedings; and

4. For such other and further relief that the Board deems appropriate under the circumstances of this case.

DATED this 29 day of September, 2010.

NEVADA STATE BOARD OF
OSTEOPATHIC MEDICINE

By: _____
DANIEL K. CURTIS, D.O.,
Investigating Member of the
Nevada Board of Osteopathic Medicine

Submitted by:
NEVADA STATE BOARD OF
OSTEOPATHIC MEDICINE

By: _____
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