

1 **BEFORE THE NEVADA STATE BOARD OF OSTEOPATHIC MEDICINE**
2 **IN THE MATTER OF THE COMPLAINT**
3 **AGAINST**
4 **MILES FINE, D.O.,**
5 **RESPONDENT.**

Case No.: *AD1006002*
Filed: **NV STATE BOARD OF
OSTEOPATHIC MEDICINE**

JUN 23 2010

FILED

6
7 **COMPLAINT**

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

15 **I.**
16 **Jurisdiction**

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

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

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

- 24 (f) Engaging in any:
25 (1) Professional conduct which is intended to deceive or
26 which the board by regulation has determined is unethical;
27 (2) Medical practice harmful to the public or any conduct
28 detrimental to the public health, safety or morals which does
 not constitute gross or repeated malpractice or professional
 incompetence. . . .

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

Nevada State Board of Osteopathic Medicine
901 American Pacific Drive Unit 180 • Henderson, NV 89014
(702) 732-2147

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

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

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

11 6. That "gross malpractice" is defined in NRS 633.041 as follows: "Gross malpractice"
12 means malpractice where the failure to exercise the requisite degree of care, diligence or skill
13 consists of:

- 14 1. Performing surgery upon or otherwise ministering to a patient while the
15 osteopathic physician is under the influence of alcohol or any controlled
16 substance
- 17 2. Gross negligence;
- 18 3. Willful disregard of established medical procedures; or
- 19 4. Willful and consistent use of medical procedures, services or treatment
20 considered by osteopathic physicians in the community to be
21 inappropriate or unnecessary in the cases where used.

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

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

28 9. That NRS 633.151 states that the "purpose of licensing osteopathic physicians and
physician assistants is to protect the public health and safety and the general welfare of the
people of [the State of Nevada]. Any license issued pursuant to this chapter is a revocable

1 privilege, and a holder of such a license does not acquire thereby any vested right.”

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

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

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

7 b. Administer to the person a public reprimand.

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

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

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

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

14 g. Require supervision of the practice of the person,

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

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

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

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

23 2. The Board shall not administer a private reprimand.

24 **II.**

25 **COUNT ONE**
26 **(CARE & TREATMENT OF PATIENT A)**

27 11. That the contents of Paragraphs 1 through 10, inclusive, of Section I, Jurisdiction,
28 of this Complaint are incorporated herein by this reference as though such was more fully set
forth herein.

12. That minor child, Patient A, born in 2002, was a patient of Respondent beginning in
May 2005 (at the approximate age of 3 years) and continuing through May 2009 (at the
approximate age of 7 years).

13. That an endoscopic nasal exam, bilaterally, was performed by Respondent on
minor child, Patient A, on the 1st day of June, 2005 as well as again on March 4, 2009. The
medical complaints of minor child, Patient A, were sinus problems, sore throat, and difficulty
breathing; and Patient A was seen on various dates by Respondent for those and similar

1 complaints.

2 14. That an endoscopic nasal debridement, bilaterally, was performed on Patient A, by
3 Respondent on June 29, 2005, as well as on September 8, 2005, and September 15, 2005.

4 15. That a CT scan of the complete sinus was performed on May 25, 2005. It is noted
5 therein that "[t]here also appears to be some fluid in the mastoid air cells." The conclusion
6 was: "[f]luid in the mastoid air cells. Consider mastoiditis."

7 16. That on June 24, 2005, Respondent performed a right and left mastoidectomy on
8 the minor child, Patient A, at Summerlin Hospital Medical Center. More specifically, the
9 operative report prepared by Respondent states: "The left mastoidectomy was carried out
10 secondary to a large amount of fluid being in the mastoid on the CT Scan. Mastoidectomy
11 was carefully carried out yielding fluid, however keeping it superficial so as not to damage
12 facial nerve. The same was done on the opposite [right] side."

13 17. That a request was made of Respondent for a true and complete copy of his
14 medical records pertaining to Patient A. A copy of the report on the sinus CT Scan, performed
15 on May 25, 2005, was not within the records provided pursuant to the provisions of NRS
16 chapter 629.
17

18 18. That a mastoidectomy is performed to remove infected mastoid air cells resulting
19 from ear infections. The mastoid air cells are open spaces containing air that are located
20 throughout the mastoid bone (a bone containing compartments or spaces for air and which is
21 prominently located behind the ear that projects from the temporal bone of the skull). The air
22 cells are connected to a cavity in the upper part of the bone, which is in turn connected to the
23 middle ear. Aggressive infections in the middle ear may spread through the mastoid bone.
24 Antibiotics are typically used prior to resulting to surgery. If surgery is necessary, however,
25 general anesthesia is used and the operation is performed through a cut, or incision, behind
26 the ear to remove the infected air cells by using an otologic drill. It is not uncommon for a drain
27
28

1 drain to be placed in the lower end of the incision. Known complications include, but are not
2 limited to, continued infections, hearing loss, and facial nerve injury.

3 19. That the Respondent's operative report also indicates the following procedures
4 were performed, in addition to the bilateral mastoidectomies: (a) endoscopic sinus surgery
5 with left maxillary antrostomy and debridement, right maxillary antrostomy and debridement,
6 left total ethmoidectomy, right total ethmoidectomy, left sphenoidotomy, right sphenoidotomy;
7 (b) submucous resection of nasal turbinates bilaterally; (c) tonsillectomy; (d) adenoidectomy;
8 and (e) left and right tympanotomy with placement of ventilation tubes.
9

10 20. That in subsequent correspondence, Respondent explained the June 24, 2005,
11 mastoidectomy procedure as follows:

12 . . . a bilateral mastoidectomy procedure was done in a standard way,
13 making post-auricular incisions, exposing and raising the periosteum to
14 expose the mastoid bone cortex. The bone was then drilled in an attempt to
15 remove mastoid cells. Sclerotic bone was encountered and removed and
16 fluid was encountered and removed as well. Then brisk bleeding occurred
17 which was difficult to control. The bleeding was controlled, however, when
18 drilling commenced, brisk bleeding again was encountered limiting visibility
19 and precluding identification of crucial landmarks. This was a very difficult
20 dissection as it was sclerotic and bleeding. I did not want to take a chance
21 at penetrating vital structures (i.e. facial nerve, tegman, sigmoid sinus, etc.).
22 I thought that the mastoidectomy was adequate and halted the procedure.
23 The other side was approached and the exact same situation was
24 encountered. These surgeries took a fair amount of time and were not
25 quick in and out procedures. "Otitis media in infancy or early childhood can
26 arrest the normal pneumatization (of the mastoid) at any stage." This would
27 account for a mastoid that is partially pneumatized and partially sclerotic.
28 This may explain why after mastoidectomies with removal of sclerotic bone
and fluid that the radiological firm may still show mastoid air cells. . . .

23 21. That a CT scan of the temporal bones of Patient A was performed on May 12,
24 2010. The radiologist's impressions were: "There is a soft tissue density within the middle ear
25 bilaterally particularly on the left. Although probably inflammatory in nature cholesteatoma
26 cannot be totally excluded. The tegman tympani is thinned bilaterally but appears somewhat
27 fenestrated on the left. Bilateral mastoid disease is identified. Incidentally noted is evidence of
28

1 of bilateral maxillary and some sphenoidal sinus disease.” There is no evidence within this CT
2 scan of the temporal bones of prior bilateral mastoidectomies and/or the “drilling” into the
3 mastoid bone cortex.

4 **III.**

5 **COUNT TWO**
6 **(Alleged Violations)**

7 22. That Petitioner repeats and realleges those comments and allegations contained in
8 Paragraphs 1 through 10, inclusive, of Section I, Jurisdiction, and Paragraphs 11 through 21,
9 inclusive, of Section II, Care & Treatment, of this complaint as if the same were more fully set
10 forth herein.

11 23. That Respondent has engaged in unethical conduct, pursuant to NAC 633.350(3),
12 by creating inaccurate and/or false medical records indicating that bilateral mastoidectomies
13 were performed on Patient A, when in fact such procedures had not been performed.

14 24. That Respondent has engaged in unethical conduct, pursuant to NAC 633.350(9),
15 in that he allegedly performed a surgery and/or did perform some type of surgical procedure on
16 a minor child when such surgery and/or procedure was un-indicated, unnecessary, and that
17 conduct constitutes an unfitness to practice osteopathic medicine.

18 25. That Respondent has engaged in unprofessional conduct, pursuant to NRS
19 633.511(1)(f)(1), in that he has created and/or maintained medical records and billing records
20 indicating that he performed bilateral mastoidectomies when in fact he did not do so, intending
21 to deceive not only the patient but the patient’s insurance company as well.

22 26. That Respondent has engaged in unprofessional conduct, pursuant to NRS
23 633.511(1)(f)(2), in that he voluntarily operated on a minor child when such operation and/or
24 procedure was unnecessary and un-indicated, scarring the said minor child behind both ears;
25 thus, such medical practice is harmful to the public as well as detrimental to the public’s health,
26 safety and morals.
27
28

1 27. That Respondent has engaged in unprofessional conduct, pursuant to NRS
2 633.511(1)(m) and (o), for failing to create and maintain accurate, legible, and complete
3 medical records due to the fact that the Respondent claims to have performed bilateral
4 mastoidectomies in those medical records, when the evidence does not support that such was
5 performed and the Respondent knows such claims are false. Additionally, when requested to
6 provide the medical records to this Board pursuant to NRS chapter 629, Respondent failed to
7 provide the CT Scan of the sinus report dated May 25, 2005, although a certificate was
8 provided by this office that the records being produced were true and complete copies of the
9 file on the minor child. Additionally, Respondent through his attorney provided medical records
10 allegedly from Respondent pertaining to minor child, Patient A, and such records are not
11 identical to those records previously provided by Respondent himself.

12 28. That Respondent has committed "gross malpractice" as defined in NRS 633.041 in
13 that Respondent performed an un-indicated bilateral mastoidectomy on Patient A and has
14 apparently scarred the minor child to perpetuate the illusion that the mastoidectomies were
15 actually performed. As such, Respondent has failed to exercise the degree of care, diligence,
16 and skill ordinarily exercised by osteopathic physicians, in good standing in this community, in
17 that the Respondent has engaged in intrusive and unnecessary procedures, as well as
18 engaged in the willful and consistent use of medical procedures, services or treatment
19 considered by osteopathic physicians in the community to be inappropriate or unnecessary in
20 the cases where used, in violation of NRS 633.131 (f)(2) and NRS 633.041(3) and (4).

21 29. That Respondent has committed professional incompetence pursuant to NRS
22 633.111 by failing to exhibit the ability to safely and skillfully practice osteopathic medicine in
23 this state by operating on a minor child when such operation was un-indicated and/or
24 unnecessary.
25
26
27

28

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, limited, or 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 reasonable attorney's fees and costs of the investigation and the administrative and disciplinary proceedings; and

.....
.....
.....
.....
.....
.....
.....
.....

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

3 DATED this 23RD day of JUNE, 2010.

4 NEVADA STATE BOARD OF
5 OSEOPATHIC MEDICINE

6 By: 

7 DANIEL K. CURTIS, D.O.,
8 Investigating Member of the
9 Nevada Board of Osteopathic Medicine

10 Submitted by:
11 NEVADA STATE BOARD OF
12 OSTEOPATHIC MEDICINE

13 By: 

14 Dianna Hegeduis, # 5616
15 901 American Pacific Dr., # 180
16 Henderson, NV 89014
17 (702) 732-2147