

**ORIGINAL**

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

**NV STATE BOARD OF  
OSTEOPATHIC MEDICINE**  
Case No.:    **DEC 04 2008**  
Filed:  
**FILED**  
Executive Director

6  
7    **COMPLAINT**

8           Pursuant to the provisions of Chapter 633 of the Nevada Revised Statutes, and by  
9 virtue of the authority vested in it by said chapter, the Investigative Board Member of the  
10 Nevada Board of Osteopathic Medicine, having a reasonable basis to believe that MILES B.  
11 FINE, D.O., hereinafter referred to as "Respondent" or "Fine," has violated the provisions of  
12 said chapter, hereby issues its formal Complaint, stating the Investigative Board Member's  
13 charges and allegations, as follows:

14    **Jurisdiction/General Allegations**

15           1.    Respondent is licensed in active status to practice medicine in the state of  
16 Nevada, and at all times alleged herein, was so licensed by the Board of Osteopathic  
17 Medicine of the State of Nevada pursuant to the provisions of NRS Chapter 633.

18           2.    NRS 633.511(1) provides that unprofessional conduct is a ground for the  
19 initiation of disciplinary proceedings.

20           3.    NRS 633.131(1) defines "Unprofessional conduct" as follows:

- 21           (f)   Engaging in any:  
22               (1)   Professional conduct which is intended to deceive . . .  
23               (2)   Medical practice harmful to the public or any conduct  
24                    detrimental to the public health, safety or morals  
25                    which does not constitute gross or repeated  
26                    malpractice or professional incompetence.  
27           (m)   Failure of a licensee to maintain timely, legible, accurate and  
28               complete medical records relating to the diagnosis, treatment and  
              care of a patient.

          4.    NAC 633.350 states, in part, that it is unethical conduct if a Licensee:

- (3)   Willfully makes and files false reports, records or claims in  
                  the licensee's practice. . . .

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1 (9) Engages in any other conduct that the Board determines  
2 constitutes unfitness to practice osteopathic medicine.

3 5. Medical billing Code 31233 is defined by the Coding Companion for  
4 ENT/Allergy/Pulmonology, published by the America Medical Association in 2005, as the  
5 operative code for "FESS" (functional endoscopic sinus surgery). Such a surgery typically  
6 requires topical vasoconstrictive agents are applied to the nasal mucosa and nerve blocks  
7 with local anesthesia are performed. Typically, the patient will have already undergone a CT  
8 scan prior to the FESS as well as pathology screenings. More specifically, in the procedure  
9 for Medical Billing Code 31233, the inferior meatus or canine fossa is puncture so that the  
10 maxillary sinus can be viewed through the scope. See attached Exhibit A.

11 6. Medical billing Code 31231 is defined by the Coding Companion for  
12 ENT/Allergy/Pulmonology, published by the America Medical Association in 2005, as the  
13 billing code typically used for the procedure known as a nasal endoscopy, which is  
14 traditionally performed in a physician's medical office. An endoscope has a rigid fiberoptic  
15 telescope that allows the physician both increased visualization and magnification of internal  
16 anatomy. It is noted in the informational sheet pertaining to Medical Billing Code 31231 that  
17 this "separate procedure by definition is usually a component of a more complex service and  
18 is not identified separately." See attached Exhibit B.

19  
20  
21 **COUNT ONE**  
**(Unprofessional Conduct)**

22 7. The allegations set forth in paragraphs 1 through 6 of the Jurisdiction section of  
23 this complaint are incorporated herein by reference, as though set forth in full.

24 8. Between July 28, 2003 and August 4, 2003, Patient A was a patient of Fine. A  
25 complaint was filed by Patient A with the Board alleging that, although charged the sum of  
26 \$2,500 on August 4, 2003, for the procedure under Medical Billing Code 31233, such a  
27 procedure was not performed.  
28

1           9.     On June 6, 2005, Patient B was a patient of Fine. A complaint was filed by  
2 Patient B with the Board alleging that Fine arrived in the room, turned out the light, and  
3 "looked up my nostrils." Patient B stated that the entire examination by Fine lasted for 4 to 5  
4 minutes. A CT scan was ordered and thereafter, Patient B returned to see Fine. The  
5 procedure for Medical Billing Code 31233 was noted on the follow up visit on June 27, 2005,  
6 and Patient B claims that no such examination was done on that date but an endoscopic  
7 exam was performed on June 6, 2005, although the appropriate Medical Billing Code for that  
8 examination should be Medical Billing Code 31231. Medical records and billings generated by  
9 Fine erroneously state that the procedure under Medical Billing Code 31233 was performed.  
10

11           10.    On October 20, 2005, Patient C was a patient of Fine and a complaint was filed  
12 by Patient C with the Board alleging that Fine "overbilled for procedures not performed." More  
13 specifically, Fine erroneously identified that Medical Billing Code 31233 procedure was  
14 performed and Patient C disputes that such a procedure was performed. Medical records and  
15 billings generated by Fine erroneously state that the procedure under Medical Billing Code  
16 31233 was performed.  
17

18           11.    On October 18, 2005, Patient D's son was a patient of Fine. Patient D  
19 subsequently filed a complaint with the Board alleging that his son was seen by Fine for  
20 swimmer's ear ache. When Patient D's son returned on October 25, 2005 to see Fine, it is  
21 alleged that the doctor spent less than 10 minutes, that the ear ache had been resolved, and  
22 that he looked "up each of my son's nostrils with a mental instrument." Patient D stated that  
23 Fine "did not deaden the nasal cavities." Fine used the Medical Billing Code 31233 when all  
24 evidence indicates that the proper Medical Billing Code should have been 31231. Medical  
25 records and billings generated by Fine erroneously state that the procedure under Medical  
26 Billing Code 31233 was performed.  
27

28           12.    On August 21, 2006, Fine saw Patient E and alleged performed the procedure

1 for Medical Billing Code 31233. Patient E claims that Fine merely looked into each nostril with  
2 a lighted instrument yet charged for Medical Billing Code 31233 for each nostril. A complaint  
3 was filed with the Board regarding the treatment rendered. Patient E indicated that an  
4 anesthetic spray was not used for the procedure and that the exam instrument was merely  
5 inserted approximately one inch up each nose. The appropriate Medical Billing Code should  
6 have been 31231. Medical records and billings generated by Fine erroneously state that the  
7 procedure under Medical Billing Code 31233 was performed.

8  
9 13. Patient F filed a complaint with the Board concerning an examination conducted  
10 on February 12, 2007. Patient F was initially seen by Fine for an ear ache on January 29,  
11 2007. At the February 12, 2007, examination, Fine only looked in Patient F's ears, not her  
12 nose. Even though an examination was not performed of the nostrils, she was charged for  
13 services identified with Medical Billing Code 31233. Medical records and billings generated by  
14 Fine erroneously state that the procedure under Medical Billing Code 31233 was performed.

15 14. By charging for services not performed, such is unprofessional conduct as  
16 defined in NRS 633.131(1), as engaging in conduct which is intended to deceive and medical  
17 practices which are detrimental to the public's health, safety, and morals; and based  
18 thereupon, discipline is warranted.

19  
20 **COUNT TWO**  
21 **(Unethical Conduct)**

22 15. The allegations set forth in paragraphs 1 through 6, inclusive, of the Jurisdiction  
23 section of this complaint and paragraphs 5 through 14, inclusive, of Count One of this  
24 complaint are incorporated herein by this reference as though more contained herein.

25 16. As alleged above, Fine willfully made false medical records regarding the exact  
26 care and/or treatment provided to Patients A through F, inclusive, and thereafter filed false  
27 claims to the insurance carriers for Patients A through F, inclusive, for payment to Fine for  
28 services not rendered. Pursuant to NAC 633.350, such intention acts and/or conduct are

1 unethical conduct and discipline is warranted.

2 17. The acts and unethical conduct described in this complaint constitute an unfitness  
3 to practice osteopathic medicine in the State of Nevada, and discipline is warranted.

4 WHEREFORE, the Investigative Member prays as follows:

5 a. That the Board of Osteopathic Medicine appoint a hearing officer in this matter  
6 and that such hearing officer conduct a hearing on this Complaint as provided by statute;

7 b. That, pursuant to NRS 633.651, Respondent, MILES B. FINE, D.O., be publicly  
8 reprimanded and/or the license of Respondent, MILES B. FINE, D.O., be revoked,  
9 suspended, limited to a specified branch of osteopathic medicine, or placed on probation with  
10 conditions and terms as the Nevada State Board of Osteopathic Medicine may deem just and  
11 proper and which are not inconsistent with law;

12 c. That Respondent, MILES B. FINE, D.O., be ordered to pay all reasonable  
13 investigative fees incurred by the Board and attorney's fees and costs incurred during the  
14 investigation as well as all Board's investigative and attorneys' fees and costs incurred during  
15 the disciplinary proceedings; and

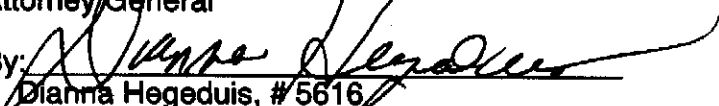
16 d. That the Board order such other and further relief as it deems appropriate under  
17 the circumstance against MILES B. FINE, D.O.

18 DATED this 4 day of December, 2008.

19  
20  
21 NEVADA STATE BOARD OF  
22 OSTEOPATHIC MEDICINE

23 By:   
24 Daniel Curtis, D.O., Investigating Member of  
25 the Nevada Board of Osteopathic Medicine

26 CATHERINE CORTEZ MASTO  
27 Attorney General

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