

**4**

### MATRIX GUIDELINE FOR DISCIPLINARY ACTIONS

	1st Action	2nd Action	3rd Action
Non ingested error	Letter	Letter	Hearing
No counseling	\$750.00	Counseling CE + \$1000.00	Hearing
Attorney Fees and Costs	Actual	Actual	Actual
Ingested no potential harm	\$500.00	\$1000.00	Hearing
Ingested with potential harm or adverse outcomes	\$1000.00	Hearing	Hearing
Ingested with negative outcome or patient discomfort.			
No institution intervention	Hearing	Hearing	Hearing
Ingested with significant negative health circumstance.			
With institution admit	Hearing	Hearing	Hearing
Ingested with death related to inappropriate drug therapy	Hearing	Hearing	Hearing

The investigative committee will review each case individually and may recommend a board hearing, particularly with mitigating circumstances such as inappropriate technician involvement or pharmacist malfeasance.

In certain cases with ingested errors and significant negative health circumstances requiring institutional care, the investigative committee recommendation will be a board hearing.

In all death cases resulting from inappropriate drug therapy a board hearing will occur.

Attorney fees and costs may be added in contested disciplinary actions requiring extensive attorney preparation and presentation and are not described in the above matrix.

The board has directed that ownership may be charged in disciplinary cases. In non-ingested errors copies of admonition letters will be sent to management. Accumulative actions for ownership monitoring will be based upon a 3 year period. All actions including non-ingested errors will be given a case number and monitored.

The Board has the authority to fine from \$0.00 to \$10,000 for each Cause of Action.

Updated May 2019

FINDING	HARM	DISCIPLINE INDIVIDUAL	DISCIPLINE FACILITY
RPH DC and WB did not complete required CEs.	N/A	DC: \$500 fine; \$1,000 administrative fee; additional CEs; attend 3 of the next 4 Board meetings; complete and pass Nevada law. WB: \$500 fine; \$1,000 administrative fee; additional CEs; attend 3 of the next 4 Board meetings.	
RPH SB failed to speak to the prescriber before, at the time or after she declined to fill a patient's prescription for clopidogrel.	N/A	Fined \$500; administrative fee of \$1,000; 4 hours of CE related to cardiology or cardiac drugs.	Fined \$1,000; an administrative fee of \$2,000; establish Board-approved policies and procedures that are consistent with Nevada law and retrain its current and future pharmacists regarding the same.
RP allowed unlicensed staff to prescribe/order dangerous drugs and use his authority to obtain, administer, access and/or possess an inventory of dangerous drugs when he was not onsite and without his direct supervision. RP did not have a bona fide therapeutic relationship with the patients. RP purchased compounded dangerous drugs from a pharmacy not licensed with the Board.	N/A	RP shall receive a public letter of reprimand; his CS registration shall be placed on probation for a period of 12 months; fined \$5,000; administrative fee of \$2,500; establish policies and procedures. RP's offices/clinics are subject to quarterly inspections for one year.	N/A
RPH NR verified a prescription for 30 chlorthalidone 25 mg. capsules which was labeled and dispensed to the wrong patient. RPH JA failed to counsel the patient. PT LP deleted the prescription from the pharmacy system. ML was the managing pharmacist.	N/A	NR shall receive a letter of reprimand; fined \$2,750; 2 additional hours of CE on error prevention. JA shall receive a letter of reprimand; fined \$750; 2 additional hours of CE on patient counseling. LP fined \$500; \$1,000 administrative fee; attend three of the Board's next four	\$1,000 fine; \$1,500 administrative fee.

FINDING	HARM	DISCIPLINE INDIVIDUAL	DISCIPLINE FACILITY
		meetings on disciplinary day. ML shall complete 4 additional hours of CE on pharmacy management.	
PT MC diverted controlled substances from her employing pharmacy.	N/A	Revocation of pharmaceutical technician registration.	N/A
RPH SB did not renew his registration and worked 244 days unlicensed. He was also the PIC.	N/A	Fined \$2,500 and \$1,000 administrative fee.	Fined \$5,000 fine and \$2,683.99 administrative fee
RPH CD verified Risperidone 2 mg. tablets in the prescription bottle as the correct product for dispensing when the physician prescribed Ropinirole 2 mg. tablets. CD failed to adequately provide counseling.	N/A	Letter of reprimand; fined \$1,000; \$1,000 administrative fee; complete 2 CEs on error prevention.	WG-NV fined \$1,000; \$1,000 administrative fee. WG-FL fined \$2,000; \$1,000 administrative fee.
RPH JS dispensed medication labeled with incorrect instructions.	N/A	Letter of reprimand; \$1,000.00 fine; \$1,000.00 administrative fee; complete two additional CEs on error prevention.	Fined \$1,000.00; \$1,000.00 administrative fee.
RPH JCH filled and dispensed a Vancomycin prescription without the necessary knowledge and proper training, accepting verbal prescriptions from non-practitioners and failing to follow the prescription written by the prescriber.	N/A	Registration revoked; the revocation is stayed with conditions: take and pass the NAPLEX and MPJE; pay a \$5,000.00 fine; pay a \$1,250.00 administrative fee. Registration shall be placed on probation for four years during which time he cannot work as a managing pharmacist in any Nevada-licensed pharmacy; cannot engage in any form of compounding; and he must attend two Board meetings each year	\$5,000.00 fine; \$1,250.00 administrative fee; subject to quarterly inspections for one year at its own expense.

FINDING	HARM	DISCIPLINE INDIVIDUAL	DISCIPLINE FACILITY
		during the four year probationary periods.	
RPH WM was the managing pharmacist accountable for violations by personnel in his employ regarding the filling, compounding and record keeping of drug products	N/A	Letter of reprimand; \$500.00 fine; \$500.00 administrative fee.	\$1,500.00 fine; \$2,500.00 administrative fee; purchase software for tracking components used in its compounding services and the products it compounds; create new policies and procedures regarding medication management and compounding; subject to quarterly inspections at their own expense.
RPH KB verified data as correct when it was not and dispensed Prednisone 50 mg. tablets when 5 mg. tablets was prescribed.	The patient experienced a temporary negative outcome as a result of the error	\$1,000.00 fine; an administrative fee of \$500.00; complete two additional CEs related to prescription verification/error prevention and 2 CEs on to DUR warnings.	Pay an administrative fee of \$1,000.00.

**4A**

APR 23 2019

NEVADA STATE BOARD  
OF PHARMACY

## BEFORE THE NEVADA STATE BOARD OF PHARMACY

NEVADA STATE BOARD OF PHARMACY,	)	CASE NOS. 17-008-RPH-A-N
	)	17-008-RPH-B-N
Petitioner,	)	17-008-PH-N
v.	)	
	)	
STEVEN DOUGLAS DEVIN, R.PH.	)	AMENDED
Certificate of Registration No. 13260,	)	NOTICE OF INTENDED ACTION
	)	AND ACCUSATION
and	)	
	)	
MELANIE KELLY, R.PH.,	)	
Certificate of Registration No. 16028,	)	
	)	
and	)	
	)	
SAFEWAY PHARMACY #2656,	)	
Certificate of Registration No. PH01820,	)	
	)	
Respondents.	/	

J. David Wuest, in his official capacity as Executive Secretary of the Nevada State Board of Pharmacy, makes the following that will serve as both a notice of intended action under Nevada Revised Statutes (NRS) 233B.127(3), and as an accusation under NRS 622A.300(1) and NRS 639.241.

**JURISDICTION**

## I.

The Nevada State Board of Pharmacy (Board) has jurisdiction over this matter because at the time of the events alleged herein, Respondents Steven Douglas Devin, R.Ph., Certificate of Registration No. 13260 (Devin), and Melanie Kelly, R.Ph., Certificate of Registration No. 16028 (Kelly), were pharmacists registered with the Board, and Respondent Safeway Pharmacy #2656 (Safeway Pharmacy) was a pharmacy licensed with the Board.

## **FACTUAL ALLEGATIONS**

### **II.**

In December 2016, a Safeway Pharmacy Professional Services Manager submitted a Report of Theft or Loss of Controlled Substances DEA 106 Form (DEA 106) to the Board Office.

### **III.**

The DEA 106 documented a theft or loss of one thousand ninety-five (1,095) Tramadol 50 mg. tablets from Safeway Pharmacy. The report indicated that a “person of interest” was identified and “terminated for policy violations” related to the theft or loss.

### **IV.**

Respondent Devin is the “person of interest” identified in the DEA 106.

### **V.**

Safeway Pharmacy terminated Devin from his employment as a staff pharmacist for making numerous negative adjustments to the store’s Tramadol inventory count in the store’s computer system.

### **VI.**

Devin admitted to recording negative adjustments to the tramadol inventory in Safeway Pharmacy’s computer system. He claims he made those adjustments to match the actual number of tablets in the store’s inventory.

### **VII.**

Devin did not file a DEA 106 to correspond to each negative adjudgment he made to Safeway Pharmacy’s computer system, nor did he report the tramadol shortages to Safeway Pharmacy management.



## VIII.

Safeway Pharmacy's Tramadol Pinpoint Audit report, which details any adjustments made to its Tramadol inventory, shows each of the adjustments made by Devin. Those adjustments are summarized as follows:

<u>Date</u>	<u>No. of Tablets</u>
July 14, 2016	-50
July 30, 2016	-200
August 8, 2016	-115
September 1, 2016	-1,048
September 10, 2016	-49
September 15, 2016	-95
September 22, 2016	-230
<u>October 14, 2016</u>	<u>-166</u>
Total Negative Adjustments	-1,953
September 3, 2016	+771
<u>October 16, 2016</u>	<u>+139</u>
Total Positive Adjustments	+910

## IX.

Devin could not explain the tramadol shortages. He denies diverting the tramadol for his own personal use.

## X.

Devin stated that on several occasions he has removed prescription-strength ibuprofen from Safeway Pharmacy's pharmacy stock without a prescription and without paying for it. He later recanted those statements.

## XI.

During the time period when Devin was making manual adjustments to the inventory counts in Safeway Pharmacy's computer system, Safeway Pharmacy's computer system generated weekly Manual On-Hand Changes Reports. Those reports show any manual

adjustments made to the inventory counts in Safeway Pharmacy's computer system during the prior week.

XII.

Each Manual On-Hand Changes Report has on it the following statement, which places on the Pharmacy Manager the responsibility to review and sign each report:

Review this report for inventory on-hand adjustments from the prior week. You are responsible for validating an appropriate business reason for every on-hand adjustment before your acceptance by signing below. Retain in your inventory binder for a period of 6 months. Any discrepancies must be immediately reported to your PRM.

This directive is repeated at the end of every weekly report, directly above the signature line.

XIII.

Respondent Kelly, the Pharmacy Manager at Safeway Pharmacy at the time Devin made adjustments to the pharmacy's inventory, did not regularly review the weekly reports that were available to her.

XIV.

Kelly allowed Devin to review and sign the weekly adjustment reports on her behalf.

XV.

Kelly should have known that Devin was making frequent manual adjustments to Safeway Pharmacy's inventory.

XVI.

On November 17, 2016, Safeway Pharmacy suspended Devin from his position as a staff pharmacist at its store.

## XVII.

As of November 23, 2016—the end of Safeway Pharmacy’s internal investigation—Safeway Pharmacy reported that it had not seen any additional Tramadol shortages since Devin’s suspension.

## XVIII.

On May 31, 2018, Devin surrendered his pharmacist license, Certificate of Registration No. #13260, effective immediately at that time.

**FIRST CAUSE OF ACTION**

(Respondent Steven Devin)

## XIX.

“Performing or in any way being a party to any fraudulent or deceitful practice or transaction” constitutes “unprofessional conduct and conduct contrary to the public interest.” Nevada Administrative Code (NAC) 639.945(1)(g) and (h). Engaging in conduct that constitutes unprofessional conduct or that is contrary to the public interest is grounds for suspension or revocation of any license issued by the Board. Nevada Revised Statute (NRS) 639.210(4).

Devin engaged in unprofessional conduct in violation of NAC 639.945(1)(h) by intentionally and repeatedly making numerous adjustments to the Tramadol count of Safeway Pharmacy’s inventory to conceal significant tramadol losses.

**SECOND CAUSE OF ACTION**

(Respondent Steven Devin)

## XX.

Devin engaged in unprofessional conduct in violation of NAC 639.945(1)(h) by repeatedly failing to report significant losses of Tramadol from Safeway Pharmacy to pharmacy management or reporting the losses to the DEA and the Board Office by filing a Report of Theft or Loss of Controlled Substances DEA 106 Form.

**THIRD CAUSE OF ACTION**

(Respondent Steven Devin)

XXI.

Devin engaged in unprofessional conduct in violation of NAC 639.945(1)(g) and (h) by diverting a dangerous drug, namely ibuprofen, from Safeway Pharmacy. Devin did not have a valid prescription for ibuprofen.

**FOURTH CAUSE OF ACTION**

**Managing Pharmacist Responsibilities**

(Respondent Melanie Kelly)

XXII.

As the managing pharmacist/pharmacist in charge of Safeway Pharmacy at the time of each of the violations alleged herein, Respondent Melanie Kelly is responsible for those violations pursuant to NRS 639.0087, NRS 639.220(3)(c), NAC 639.510(2), and NAC 639.945(1)(i).

**FIFTH CAUSE OF ACTION**

**Pharmacy/Pharmacy Owner Responsibility**

(Respondent Safeway Pharmacy #2656)

XXIII.

NAC 639.945(2) states that “[t]he owner of any business or facility licensed, certified or registered by the Board is responsible for the acts of all personnel in his or her employ”. At the time of the violations alleged herein, Respondents Devin and Kelly were each Safeway Pharmacy employees. As such, Safeway Pharmacy is responsible for each of the violations alleged herein.

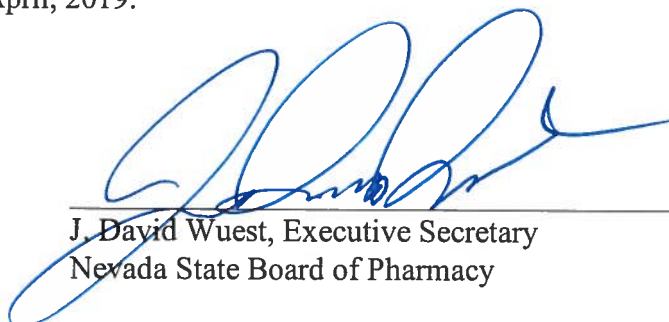
XXIV.

For the errors, misconduct and violations alleged above in the First, Second, Third, Fourth, and Fifth Causes of Action, Respondents, and each of them, are subject to discipline pursuant NRS 639.210(1), (4), (11) and (12), as well as NRS 639.230(5) and/or NRS 639.255.

XXV.

WHEREFORE, it is requested that the Nevada State Board of Pharmacy take appropriate disciplinary action with respect to the certificate of registration of these Respondents.

Signed this 23<sup>rd</sup> day of April, 2019.



J. David Wuest, Executive Secretary  
Nevada State Board of Pharmacy

**NOTICE TO RESPONDENT**

You have the right to show the Nevada State Board of Pharmacy that your conduct, as alleged above, complies with all lawful requirements. NRS 233B.127(3). You have the right to a hearing before the Board to answer the Notice of Intended Action and Accusation and present evidence and argument on all issues involved, either personally or through counsel. NRS 233B.121; NRS 233B.127(3); NRS 622A.300(1) and (3); NRS 639.241. To do so, you must complete and file two (2) copies of the Answer and Notice of Defense served herewith, to be received by the Board's Reno office located at 985 Damonte Ranch Parkway – Suite 206, Reno, Nevada 89521, within twenty (20) days of your receipt of this Notice of Intended Action and Accusation. NRS 639.320; NRS 639.243.

**BEFORE THE NEVADA STATE BOARD OF PHARMACY**

<b>NEVADA STATE BOARD OF PHARMACY,</b>	)	<b>CASE NO. 17-008-RPH-A-N</b>
	)	
<b>Petitioner,</b>	)	
<b>v.</b>	)	<b>STATEMENT TO THE RESPONDENT</b>
	)	<b>NOTICE OF INTENDED ACTION</b>
<b>STEVEN DOUGLAS DEVIN, R.PH.,</b>	)	<b>AND ACCUSATION</b>
<b>Certificate of Registration No. 13260,</b>	)	<b>RIGHT TO HEARING</b>
	)	
<b>Respondent.</b>	/	

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TO THE RESPONDENT ABOVE-NAMED: PLEASE TAKE NOTICE THAT:

**I.**

Pursuant to the authority and jurisdiction conferred upon the Nevada State Board of Pharmacy (Board) by NRS 639.241 to NRS 639.2576, inclusive, and NRS chapter 233B and 622A, a Notice of Intended Action and Accusation has been filed with the Board by the Petitioner, J. David Wuest, Executive Secretary for the Board, alleging grounds for imposition of disciplinary action by the Board against you, as is more fully explained and set forth in the Notice of Intended Action and Accusation served herewith and hereby incorporated reference herein.

**II.**

You have the right to show the Nevada State Board of Pharmacy that your conduct, as alleged above, complies with all lawful requirements. NRS 233B.127(3). You have the right to a hearing before the Board to answer the Notice of Intended Action and Accusation and present evidence and argument on all issues involved, either personally or through counsel. NRS 233B.121; NRS 233B.127(3); NRS 622A.300(1) and (3); NRS 639.241. To do so, you must complete and file two (2) copies of the Answer and Notice of Defense served herewith, to be received by the Board's Reno office located at 985 Damonte Ranch Parkway – Suite 206, Reno, Nevada 89521, within twenty (20) days of your receipt of this Statement and Notice, and of the Notice of Intended Action and Accusation served within. NRS 639.320; NRS 639.243.

## III.

**The Board has reserved Wednesday, June 5, 2019, as the date for a hearing on this matter at the Hyatt Place, 1790 East Plumb Lane, Reno, Nevada. The hour of the hearing will be set by letter to follow.**

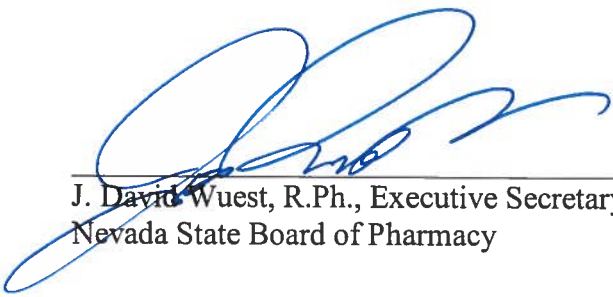
## IV.

Pursuant to NRS 241.033 and 241.034, please be advised that the hearing is a public meeting, and the Board may, without further notice, take administrative action against you if the Board determines that such administrative action is warranted after considering your character, alleged misconduct, professional competence, or physical or mental health. The Board at its discretion may go into closed session to consider your character, alleged misconduct, professional competence, or physical or mental health. You may attend any closed session, have an attorney or other representative of your choosing present during any closed session, and present written evidence, provide testimony, and present witnesses relating to your character, alleged misconduct, professional competence, or physical or mental health during any closed session.

## V.

Your failure to timely file an Answer and Notice of Defense constitutes an admission of the charges and waiver of the right to a hearing. NRS 639.244. If you fail to appear at the hearing and the Board finds that you were given sufficient legal notice of the hearing, the Board may accept the allegations as true and may proceed to consider the case and render a decision. NRS 622A.350.

DATED this 23<sup>rd</sup> day of April, 2019.



J. David Wuest, R.Ph., Executive Secretary  
Nevada State Board of Pharmacy

FILED

## BEFORE THE NEVADA STATE BOARD OF PHARMACY

MAY 20 2019

NEVADA STATE BOARD  
OF PHARMACY

NEVADA STATE BOARD OF PHARMACY,

) CASE NO. 17-008-RPH-A-N

) Petitioner,

v.

) ANSWER AND

) NOTICE OF DEFENSE

STEVEN DOUGLAS DEVIN, R.PH.,  
Certificate of Registration No. 13260,

Respondent. /

Respondent above named, in answer to the Notice of Intended Action and Accusation filed in the above-entitled matter before the Nevada State Board of Pharmacy, declares:

1. That her objection to the Notice of Intended Action and Accusation as being incomplete or failing to state clearly the charges against her, is hereby interposed on the following grounds: (State specific objections or insert "none").

*Please see attached letter.*





2. That, in answer to the Notice of Intended Action and Accusation, she admits, denies and alleges as follows:

*Please see attached letter.*

I hereby declare, under penalty of perjury, that the foregoing Answer and Notice of Defense, and all facts therein stated, are true and correct to the best of my knowledge.

DATED this 15 <sup>MAY</sup> day of April, 2019.



Steven Douglas Devin, R.Ph.

Dear Board,

I wish to reply to your most recent accusation, which seems to be the same as your previous accusation of a year ago.

The accusation implies, but does not charge, that I was responsible for the loss of a large amount of tramadol. I addressed this in my initial interview with the Safeway investigator and in both my interviews with the board inspector, and I will leave that matter as it is.

I am being accused of two things- failing to submit reports to the DEA of missing controlled substances, and having said that at some time in my career I had taken a Motrin from a pharmacy.

I have admitted to failing to submit the required DEA 106 reports. I simply adjusted the computer totals in the pharmacy to match the on-hand physical totals for tramadol, and thought no more about it. I did not suspect diversion taking place- I assumed that since so many other totals were being constantly adjusted, that the computer was simply wrong. I can only think that since I had dispensed tramadol for at least 15 years as a non-controlled substance, I simply didn't think of it as a controlled substance at that point. When tramadol became a controlled drug in 2014, I was not working in retail pharmacy, and didn't see it as a controlled drug until I began working in Sparks at Safeway. This is not an excuse, it is simply my best guess as to why I failed to submit the reports. I knew about the necessity to file such reports for a C-II drug, but didn't think of it in regard to tramadol. At no time was I told that I was failing to submit such reports.

As to the Motrin accusation- this is crap. I was asked if I had EVER taken a drug from the pharmacy, and in the spirit of disclosure, I said that I was sure that at some point in my career I had taken a Motrin. I wasn't even thinking of this pharmacy- it could have been one of many, and not all were Nevada licensed. The Safeway investigator that asked that question immediately pounced and wanted to know when I took it, and I replied I couldn't even remember doing so, which meant it couldn't have been recently. He took it to mean that I was taking multiple doses of Motrin from this pharmacy, even though there is no significant missing Motrin, to my knowledge, from this pharmacy. When it was reported to the board, the board investigator took the same approach, and when I tried to correct his accusation, seemed to hear what I was saying, but the charge remained that I had taken multiple Motrin from this pharmacy on multiple occasions. I did not "recant" my statement- it was misrepresented from the start and never corrected.

Sincerely,

Steve Devin



### **CERTIFICATE OF SERVICE**

I certify that I am an employee of the Nevada State Board of Pharmacy, and that on this 23<sup>rd</sup> day of April 2019, I served a true and correct copy of the foregoing document by Certified U.S. Mail to the following:

Steven Devin, R.Ph.  
9164 Kenton Trail  
Reno, NV 89523

Melanie Kelly, R.Ph.  
3737 Banfi Ct.  
Sparks, NV 89436

Safeway Pharmacy #2656  
2858 Vista Blvd.  
Sparks, NV 89434



SHIRLEY HUNTING

**4B**

**BEFORE THE NEVADA STATE BOARD OF PHARMACY**

**NEVADA STATE BOARD OF PHARMACY,**

**Petitioner,**

**v.**

**MELANIE KELLY, R.PH.,**  
**Certificate of Registration No. 16028,**

**Respondent.**

) **CASE NO. 17-008-RPH-B-N**  
 )  
 )  
 ) **STATEMENT TO THE RESPONDENT**  
 ) **NOTICE OF INTENDED ACTION**  
 ) **AND ACCUSATION**  
 ) **RIGHT TO HEARING**  
 )  
 /

TO THE RESPONDENT ABOVE-NAMED: PLEASE TAKE NOTICE THAT:

**I.**

Pursuant to the authority and jurisdiction conferred upon the Nevada State Board of Pharmacy (Board) by NRS 639.241 to NRS 639.2576, inclusive, and NRS chapter 233B and 622A, a Notice of Intended Action and Accusation has been filed with the Board by the Petitioner, J. David Wuest, Executive Secretary for the Board, alleging grounds for imposition of disciplinary action by the Board against you, as is more fully explained and set forth in the Notice of Intended Action and Accusation served herewith and hereby incorporated reference herein.

**II.**

You have the right to show the Nevada State Board of Pharmacy that your conduct, as alleged above, complies with all lawful requirements. NRS 233B.127(3). You have the right to a hearing before the Board to answer the Notice of Intended Action and Accusation and present evidence and argument on all issues involved, either personally or through counsel. NRS 233B.121; NRS 233B.127(3); NRS 622A.300(1) and (3); NRS 639.241. To do so, you must complete and file two (2) copies of the Answer and Notice of Defense served herewith, to be received by the Board's Reno office located at 985 Damonte Ranch Parkway – Suite 206, Reno, Nevada 89521, within twenty (20) days of your receipt of this Statement and Notice, and of the Notice of Intended Action and Accusation served within. NRS 639.320; NRS 639.243.

## III.

**The Board has reserved Wednesday, June 5, 2019, as the date for a hearing on this matter at the Hyatt Place, 1790 East Plumb Lane, Reno, Nevada. The hour of the hearing will be set by letter to follow.**

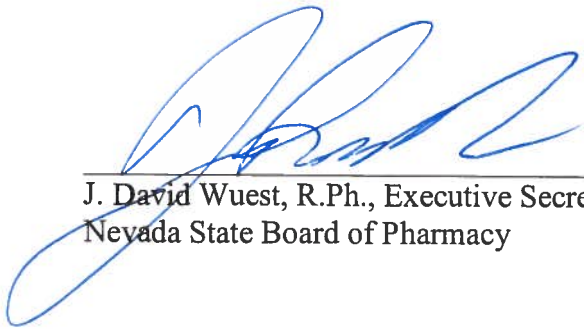
## IV.

Pursuant to NRS 241.033 and 241.034, please be advised that the hearing is a public meeting, and the Board may, without further notice, take administrative action against you if the Board determines that such administrative action is warranted after considering your character, alleged misconduct, professional competence, or physical or mental health. The Board at its discretion may go into closed session to consider your character, alleged misconduct, professional competence, or physical or mental health. You may attend any closed session, have an attorney or other representative of your choosing present during any closed session, and present written evidence, provide testimony, and present witnesses relating to your character, alleged misconduct, professional competence, or physical or mental health during any closed session.

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Your failure to timely file an Answer and Notice of Defense constitutes an admission of the charges and waiver of the right to a hearing. NRS 639.244. If you fail to appear at the hearing and the Board finds that you were given sufficient legal notice of the hearing, the Board may accept the allegations as true and may proceed to consider the case and render a decision. NRS 622A.350.

DATED this 23<sup>rd</sup> day of April, 2019.



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J. David Wuest, R.Ph., Executive Secretary  
Nevada State Board of Pharmacy

**BEFORE THE NEVADA STATE BOARD OF PHARMACY**

<b>NEVADA STATE BOARD OF PHARMACY,</b>	)	<b>CASE NO. 17-008-RPH-B-N</b>
	)	
<b>Petitioner,</b>	)	
v.	)	<b>ANSWER AND</b>
	)	<b>NOTICE OF DEFENSE</b>
<b>MELANIE KELLY, R.PH.,</b>	)	
<b>Certificate of Registration No. 16028,</b>	)	
	)	
<b>Respondent.</b>	/	

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Respondent above named, in answer to the Notice of Intended Action and Accusation filed in the above-entitled matter before the Nevada State Board of Pharmacy, declares:

1. That her objection to the Notice of Intended Action and Accusation as being incomplete or failing to state clearly the charges against her, is hereby interposed on the following grounds: (State specific objections or insert "none").

2. That, in answer to the Notice of Intended Action and Accusation, she admits, denies and alleges as follows:

I hereby declare, under penalty of perjury, that the foregoing Answer and Notice of Defense, and all facts therein stated, are true and correct to the best of my knowledge.

DATED this \_\_\_\_\_ day of April, 2019.

---

Melanie Kelly, R.Ph.





May 14, 2019

J. David Wuest, Executive Secretary  
Nevada Board of Pharmacy  
985 Damonte Ranch Parkway, Suite 206  
Reno, NV 89521

*Re: Case Nos. 17-008-RPH-B-N (Melanie Kelly, Registration No. 16028) and 17-008-PH-N (Safeway Pharmacy #2656, Registration No. PH01820)*

Dear Mr. Wuest:

Provided herein is our written response on behalf of Safeway Pharmacy #2656 and its Pharmacist-in-Charge Melanie Kelly (hereinafter "Respondents") to the allegations presented in the Amended Notice of Intended Action and Accusation referenced above. The Respondents admit the Factual Allegations stated in paragraphs II through XII of the Accusation.

For paragraphs XIII through XV, Respondent Kelly admits that Mr. Devin was allowed to review the adjustment reports that were generated on Sunday by the pharmacy system being used during this timeframe (PDX Classic). Ms. Kelly explains that the reason for this was that Mr. Devin regularly worked on Sunday when this report printed, appeared to be responsible in his duties, and had otherwise given Ms. Kelly no reason to suspect him of diversion. Respondent Safeway #2656 admits paragraphs XVI and XVII. Respondents have no basis on which to admit or deny the facts stated in paragraph XVIII.

As to the stated Causes of Action against these Respondents, Respondent Kelly acknowledges the oversight responsibilities assigned to her as a pharmacist-in-charge under Nevada law. Once Ms. Kelly learned of the actions of Mr. Devin, she took immediate steps to require all staff members to back count controlled substance fills and keep a running total on the stock bottle of the amount contained therein. Additionally, for 12 months following the resolution of this matter, Ms. Kelly has agreed to print the inventory adjustment report weekly (which no longer automatically prints due to a pharmacy system upgrade), review all inventory adjustments by staff members, and resolve any unexplained adjustments. Upon completion, Ms. Kelly will sign and date the report and retain it on file for inspection upon request.

As to the Fifth Cause of Action, Safeway acknowledges that Nevada's Board Rules also assigns responsibility to a business registrant for the acts of its employees, including any violations of the law. In this case, an internal investigation was initiated based on reported losses. This investigation quickly identified Mr. Devin as the primary suspect and prompt action was taken to remove Mr. Devin from the pharmacy.

In addition to the steps taken at this specific location, Albertsons Companies (parent company of Safeway Inc.) has taken a number of steps to detect and prevent diversion in its pharmacies, including:

- Enhanced training on controlled substance recordkeeping requirements with a focus on the prevention of theft and diversion;
- Updated policies and procedures requiring double verification or checking in under camera coverage of all controlled substance product orders;
- Increased central monitoring of purchasing patterns and inventory adjustments;
- Procurement of highly diverted products in smaller count bottles;
- Random targeted counts of controlled substance products by company field evaluators;

J. David Wuest, Executive Secretary  
Nevada Board of Pharmacy  
May 14, 2019  
Page 2

- Revised the cycle count processes to ensure more frequent counting of targeted controlled substances;
- Increased camera coverage in pharmacies; and
- Implemented diversion deterrent strategies such as notifying employees of ongoing CCTV monitoring.

We assure you that we take seriously our combined obligation to detect and, whenever possible, prevent diversion in our pharmacies. We are interested in resolving this matter expediently and on an informal basis if possible. We hope you and the Board will consider the steps taken toward this outcome. We would appreciate the opportunity to discuss with you the potential to resolve this matter as soon as possible. Also, feel free contact me at any time in this process at [Anthony.Provenzano@Albertsons.com](mailto:Anthony.Provenzano@Albertsons.com) or by phone at (208) 395-3354.

Sincerely,

ALBERTSONS COMPANIES, INC.



Anthony Provenzano, PharmD  
Vice President, Pharmacy Compliance

SAFEWAY PHARMACY #2656

Melanie Kelly, PIC

Cc: Dan Day, VP, Chief Compliance Officer

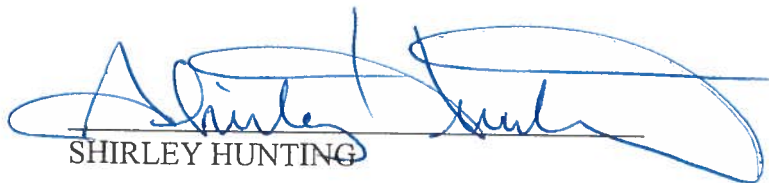
## CERTIFICATE OF SERVICE

I certify that I am an employee of the Nevada State Board of Pharmacy, and that on this 23<sup>rd</sup> day of April 2019, I served a true and correct copy of the foregoing document by Certified U.S. Mail to the following:

Steven Devin, R.Ph.  
9164 Kenton Trail  
Reno, NV 89523

Melanie Kelly, R.Ph.  
3737 Banfi Ct.  
Sparks, NV 89436

Safeway Pharmacy #2656  
2858 Vista Blvd.  
Sparks, NV 89434



SHIRLEY HUNTING

**4C**

**BEFORE THE NEVADA STATE BOARD OF PHARMACY**

<b>NEVADA STATE BOARD OF PHARMACY,</b>	)	<b>CASE NO. 17-008-PH-N</b>
	)	
<b>Petitioner,</b>	)	
<b>v.</b>	)	<b>STATEMENT TO THE RESPONDENT</b>
	)	<b>NOTICE OF INTENDED ACTION</b>
<b>SAFEWAY PHARMACY #2656,</b>	)	<b>AND ACCUSATION</b>
<b>Certificate of Registration No. PH01820,</b>	)	<b>RIGHT TO HEARING</b>
	)	
<b>Respondent.</b>	/	

TO THE RESPONDENT ABOVE-NAMED: PLEASE TAKE NOTICE THAT:

**I.**

Pursuant to the authority and jurisdiction conferred upon the Nevada State Board of Pharmacy (Board) by NRS 639.241 to NRS 639.2576, inclusive, and NRS chapter 233B and 622A, a Notice of Intended Action and Accusation has been filed with the Board by the Petitioner, J. David Wuest, Executive Secretary for the Board, alleging grounds for imposition of disciplinary action by the Board against you, as is more fully explained and set forth in the Notice of Intended Action and Accusation served herewith and hereby incorporated reference herein.

**II.**

You have the right to show the Nevada State Board of Pharmacy that your conduct, as alleged above, complies with all lawful requirements. NRS 233B.127(3). You have the right to a hearing before the Board to answer the Notice of Intended Action and Accusation and present evidence and argument on all issues involved, either personally or through counsel. NRS 233B.121; NRS 233B.127(3); NRS 622A.300(1) and (3); NRS 639.241. To do so, you must complete and file two (2) copies of the Answer and Notice of Defense served herewith, to be received by the Board's Reno office located at 985 Damonte Ranch Parkway – Suite 206, Reno, Nevada 89521, within twenty (20) days of your receipt of this Statement and Notice, and of the Notice of Intended Action and Accusation served within. NRS 639.320; NRS 639.243.

## III.

**The Board has reserved Wednesday, June 5, 2019, as the date for a hearing on this matter at the Hyatt Place, 1790 East Plumb Lane, Reno, Nevada. The hour of the hearing will be set by letter to follow.**

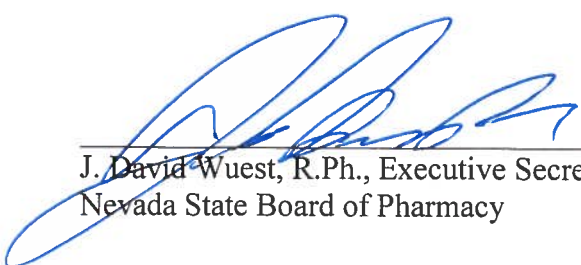
## IV.

Pursuant to NRS 241.033 and 241.034, please be advised that the hearing is a public meeting, and the Board may, without further notice, take administrative action against you if the Board determines that such administrative action is warranted after considering your character, alleged misconduct, professional competence, or physical or mental health. The Board at its discretion may go into closed session to consider your character, alleged misconduct, professional competence, or physical or mental health. You may attend any closed session, have an attorney or other representative of your choosing present during any closed session, and present written evidence, provide testimony, and present witnesses relating to your character, alleged misconduct, professional competence, or physical or mental health during any closed session.

## V.

Your failure to timely file an Answer and Notice of Defense constitutes an admission of the charges and waiver of the right to a hearing. NRS 639.244. If you fail to appear at the hearing and the Board finds that you were given sufficient legal notice of the hearing, the Board may accept the allegations as true and may proceed to consider the case and render a decision. NRS 622A.350.

DATED this 23<sup>rd</sup> day of April, 2019.



J. David Wuest, R.Ph., Executive Secretary  
Nevada State Board of Pharmacy

**BEFORE THE NEVADA STATE BOARD OF PHARMACY**

<b>NEVADA STATE BOARD OF PHARMACY,</b>	)	<b>CASE NO. 17-008-PH-N</b>
	)	
<b>Petitioner,</b>	)	
<b>v.</b>	)	<b>ANSWER AND</b>
	)	<b>NOTICE OF DEFENSE</b>
<b>SAFEWAY PHARMACY #2656,</b>	)	
<b>Certificate of Registration No. PH01820,</b>	)	
	)	
<b>Respondent.</b>	/	

---

Respondent above named, in answer to the Notice of Intended Action and Accusation filed in the above-entitled matter before the Nevada State Board of Pharmacy, declares:

1. That his objection to the Notice of Intended Action and Accusation as being incomplete or failing to state clearly the charges against him, is hereby interposed on the following grounds: (State specific objections or insert "none")

2. That, in answer to the Notice of Intended Action and Accusation, he admits, denies and alleges as follows:

I hereby declare, under penalty of perjury, that the foregoing Answer and Notice of Defense, and all facts therein stated, are true and correct to the best of my knowledge.

DATED this \_\_\_\_\_ day of April, 2019.

\_\_\_\_\_  
Type or print name

\_\_\_\_\_  
Authorized Representative For  
Safeway Pharmacy #2656





May 14, 2019

J. David Wuest, Executive Secretary  
Nevada Board of Pharmacy  
985 Damonte Ranch Parkway, Suite 206  
Reno, NV 89521

*Re: Case Nos. 17-008-RPH-B-N (Melanie Kelly, Registration No. 16028) and 17-008-PH-N (Safeway Pharmacy #2656, Registration No. PH01820)*

Dear Mr. Wuest:

Provided herein is our written response on behalf of Safeway Pharmacy #2656 and its Pharmacist-in-Charge Melanie Kelly (hereinafter "Respondents") to the allegations presented in the Amended Notice of Intended Action and Accusation referenced above. The Respondents admit the Factual Allegations stated in paragraphs II through XII of the Accusation.

For paragraphs XIII through XV, Respondent Kelly admits that Mr. Devin was allowed to review the adjustment reports that were generated on Sunday by the pharmacy system being used during this timeframe (PDX Classic). Ms. Kelly explains that the reason for this was that Mr. Devin regularly worked on Sunday when this report printed, appeared to be responsible in his duties, and had otherwise given Ms. Kelly no reason to suspect him of diversion. Respondent Safeway #2656 admits paragraphs XVI and XVII. Respondents have no basis on which to admit or deny the facts stated in paragraph XVIII.

As to the stated Causes of Action against these Respondents, Respondent Kelly acknowledges the oversight responsibilities assigned to her as a pharmacist-in-charge under Nevada law. Once Ms. Kelly learned of the actions of Mr. Devin, she took immediate steps to require all staff members to back count controlled substance fills and keep a running total on the stock bottle of the amount contained therein. Additionally, for 12 months following the resolution of this matter, Ms. Kelly has agreed to print the inventory adjustment report weekly (which no longer automatically prints due to a pharmacy system upgrade), review all inventory adjustments by staff members, and resolve any unexplained adjustments. Upon completion, Ms. Kelly will sign and date the report and retain it on file for inspection upon request.

As to the Fifth Cause of Action, Safeway acknowledges that Nevada's Board Rules also assigns responsibility to a business registrant for the acts of its employees, including any violations of the law. In this case, an internal investigation was initiated based on reported losses. This investigation quickly identified Mr. Devin as the primary suspect and prompt action was taken to remove Mr. Devin from the pharmacy.

In addition to the steps taken at this specific location, Albertsons Companies (parent company of Safeway Inc.) has taken a number of steps to detect and prevent diversion in its pharmacies, including:

- Enhanced training on controlled substance recordkeeping requirements with a focus on the prevention of theft and diversion;
- Updated policies and procedures requiring double verification or checking in under camera coverage of all controlled substance product orders;
- Increased central monitoring of purchasing patterns and inventory adjustments;
- Procurement of highly diverted products in smaller count bottles;
- Random targeted counts of controlled substance products by company field evaluators;

J. David Wuest, Executive Secretary  
Nevada Board of Pharmacy  
May 14, 2019  
Page 2

- Revised the cycle count processes to ensure more frequent counting of targeted controlled substances;
- Increased camera coverage in pharmacies; and
- Implemented diversion deterrent strategies such as notifying employees of ongoing CCTV monitoring.

We assure you that we take seriously our combined obligation to detect and, whenever possible, prevent diversion in our pharmacies. We are interested in resolving this matter expediently and on an informal basis if possible. We hope you and the Board will consider the steps taken toward this outcome. We would appreciate the opportunity to discuss with you the potential to resolve this matter as soon as possible. Also, feel free contact me at any time in this process at [Anthony.Provenzano@Albertsons.com](mailto:Anthony.Provenzano@Albertsons.com) or by phone at (208) 395-3354.

Sincerely,

ALBERTSONS COMPANIES, INC.



Anthony Provenzano, PharmD  
Vice President, Pharmacy Compliance

SAFEWAY PHARMACY #2656

Melanie Kelly, PIC

Cc: Dan Day, VP, Chief Compliance Officer


## CERTIFICATE OF SERVICE

I certify that I am an employee of the Nevada State Board of Pharmacy, and that on this 23<sup>rd</sup> day of April 2019, I served a true and correct copy of the foregoing document by Certified U.S. Mail to the following:

Steven Devin, R.Ph.  
9164 Kenton Trail  
Reno, NV 89523

Melanie Kelly, R.Ph.  
3737 Banfi Ct.  
Sparks, NV 89436

Safeway Pharmacy #2656  
2858 Vista Blvd.  
Sparks, NV 89434



SHIRLEY HUNTING

**4D**

FILED

MAY 02 2019

NEVADA STATE BOARD  
OF PHARMACY

## BEFORE THE NEVADA STATE BOARD OF PHARMACY

NEVADA STATE BOARD OF PHARMACY,	)	CASE NO. 18-086-PH-N
	)	
Petitioner,	)	
v.	)	
	)	NOTICE OF INTENDED ACTION
CVS PHARMACY #4691,	)	AND ACCUSATION
Certificate of Registration No. PH02471,	)	
	)	
Respondent.	/	

---

J. David Wuest, in his official capacity as Executive Secretary of the Nevada State Board of Pharmacy, makes the following that will serve as both a notice of intended action under Nevada Revised Statutes (NRS) 233B.127(3) and as an accusation under NRS 622A.300(1) and NRS 639.241.

**JURISDICTION**

I.

The Nevada State Board of Pharmacy (Board) has jurisdiction over this matter because at the time of the events alleged herein, Respondent CVS Pharmacy #4691, Certificate of Registration No. PH02471 (CVS), was a pharmacy licensed by the Board.

**DISCIPLINARY HISTORY**

II.

In March 2019, the Board entered a Stipulation and Order (Order) in the case of *Board of Pharmacy v. CVS Pharmacy #4691*, Case No. 17-089-PH-N. The Board found CVS Pharmacy #4691 responsible for the actions of its employees for violations resulting in a dispensing error. The error began with pharmaceutical technician Gisela Ochoa, who mistakenly entered a new prescription under the wrong patient name and patient profile. That error combined, with other

errors within the pharmacy, caused CVS to dispense a prescription for a schedule IV-controlled substance to a patient who did not have a prescription for that medication.

The Board ordered CVS to pay a fine of \$1,000.00 and an administrative fee of \$1,000.00 as part of that action.

### **FACTUAL ALLEGATIONS**

#### **III.**

In October 2018, patient Laura S.<sup>1</sup> (Laura) provided three prescriptions from her practitioner to CVS, including prescriptions for Pantoprazole 40 mg. tablets (Rx No. 0778327), Sumatriptan (Rx No. 0783827) and Ondansetron (Rx No. 0791540).

#### **IV.**

On October 10, 2018, Laura's husband went to CVS to pick up Laura's medications.

#### **V.**

At the point of sale, pharmaceutical technician Gisela Ochoa (Ochoa) pulled Laura's Sumatriptan and Ondansetron prescriptions from the will-call bin and she inadvertently retrieved an unrelated prescription for Pantoprazole 40 mg. tablets (Rx No. 0746143) from the bin that was written for another patient, Linda S. (Linda).

#### **VI.**

At the cash register, Ochoa compounded the error when she scanned only the Sumatriptan and Ondansetron prescriptions, which correctly identified Laura as the patient. Ochoa did not scan the label on the Pantoprazole (Rx No. 0746143), which contained Linda's patient identifiers.

#### **VII.**

Ochoa placed all three medications, including Linda's Pantoprazole, in a bag and sold them to Laura's husband.

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<sup>1</sup> CVS patients Laura S. and Linda S. have similar but distinguishable first and last names.

## VIII.

Laura's husband detected the error after he left CVS.

## IX.

Although Ochoa completed the sales transaction for all three prescriptions, CVS's cash register receipt and records incorrectly show that a different pharmaceutical technician, "Jenifer"<sup>2</sup>, completed the transaction.

## X.

Ochoa admits that she completed the point of sale scan of the subject prescriptions and completed the sales transaction using a computer where technician "Jenifer" was logged in. Ochoa claims that she did not log off and log in under her own credentials because the pharmacy was busy and she did not have "Jenifer's" passcode to sign off "Jenifer's" personal credentials.

## XI.

Counseling was not required for these prescriptions.

**FIRST CAUSE OF ACTION**

## XII.

Unprofessional conduct includes the failure by a licensee to follow strictly the instructions of a practitioner when labeling and dispensing a prescription. *See* NAC 639.945(1)(d). It also includes a licensee performing his duties in an "incompetent, unskillful or negligent manner". *See* NAC 639.945(1)(i). The owner of any business or facility licensed, certified or registered by the Board is responsible for the acts of all personnel in his or her employ. NAC 639.945(2).

Respondent Ochoa performed her duties in an incompetent, unskillful or negligent manner when she failed to strictly follow the instructions of a practitioner by dispensing a prescription to the wrong patient. As the pharmacy/pharmacy owner at which Ochoa violated the law as alleged herein, CVS #4691 is responsible for those violations pursuant to NRS

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<sup>2</sup> Jenifer Grove was a pharmaceutical technician registered with the Board and employed by CVS at the time of the events alleged herein.

639.230(5) and NAC 639.945(2). CVS #4691 is therefore subject to discipline pursuant to NRS 639.210(4) and (12) and NRS 639.255.

### **SECOND CAUSE OF ACTION**

#### **XIII.**

NAC 639.751 requires that a pharmacy's computer system "accurately depict the identity of the person entering [a] signature or initials" or other required information into the computer system.

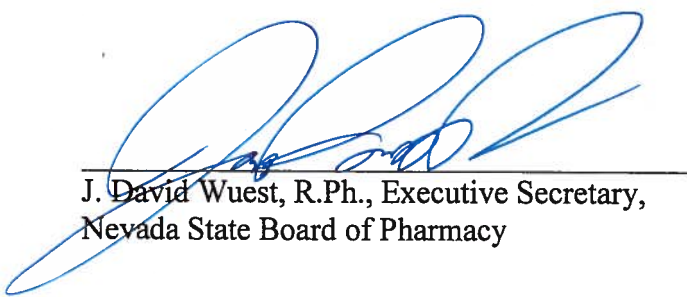
Further, the owner of any business or facility licensed, certified or registered by the Board is responsible for the acts of all personnel in his or her employ. NAC 639.945(2).

Respondent Ochoa performed the point of sale prescription scans and sales transaction under another employee, Jenifer Grove's, computer initials. Jenifer Grove failed to maintain the security of her password. The actions of Ochoa and Grove violate of NAC 639.751 and NAC 639.930.

As the pharmacy/pharmacy owner at which the violations of law alleged herein occurred, CVS #4691 is responsible for those violations, including those of Ochoa and Grove pursuant to NRS 639.230(5) and NAC 639.945(2). CVS #4691 is therefore subject to discipline pursuant to NRS 639.210(4) and (12) and NRS 639.255, NAC 639.751 and NAC 639.930.

WHEREFORE, it is requested that the Nevada State Board of Pharmacy take appropriate disciplinary action with respect to the certificate of registration of this respondent.

Signed this 2<sup>nd</sup> day of May, 2019.



---

J. David Wuest, R.Ph., Executive Secretary,  
Nevada State Board of Pharmacy



**NOTICE TO RESPONDENT**

You have the right to show the Nevada State Board of Pharmacy that your conduct, as alleged above, complies with all lawful requirements. NRS 233B.127(3). You have the right to a hearing before the Board to answer the Notice of Intended Action and Accusation and present evidence and argument on all issues involved, either personally or through counsel. NRS 233B.121; NRS 233B.127(3); NRS 622A.300(1) and (3); NRS 639.241. To do so, you must complete and file two (2) copies of the Answer and Notice of Defense served herewith, to be received by the Board's Reno office located at 985 Damonte Ranch Parkway – Suite 206, Reno, Nevada 89521, within twenty (20) days of your receipt of this Notice of Intended Action and Accusation. NRS 639.320; NRS 639.243.

**BEFORE THE NEVADA STATE BOARD OF PHARMACY**

<b>NEVADA STATE BOARD OF PHARMACY,</b>	)	<b>CASE NO. 18-086-PH-N</b>
	)	
<b>Petitioner,</b>	)	
<b>v.</b>	)	
	)	<b>STATEMENT TO THE</b>
<b>CVS PHARMACY #4691</b>	)	<b>RESPONDENT AND</b>
<b>Certificate of Registration No. PH02471,</b>	)	<b>NOTICE OF HEARING</b>
	)	
<b>Respondent.</b>	)	
	/	

---

TO THE RESPONDENT ABOVE-NAMED: PLEASE TAKE NOTICE THAT:

**I.**

Pursuant to the authority and jurisdiction conferred upon the Nevada State Board of Pharmacy (Board) by NRS 639.241 to NRS 639.2576, inclusive, and NRS chapter 233B and 622A, a Notice of Intended Action and Accusation has been filed with the Board by the Petitioner, J. David Wuest, Executive Secretary for the Board, alleging grounds for imposition of disciplinary action by the Board against you, as is more fully explained and set forth in the Notice of Intended Action and Accusation served herewith and hereby incorporated reference herein.

**II.**

You have the right to show the Nevada State Board of Pharmacy that your conduct, as alleged above, complies with all lawful requirements. NRS 233B.127(3). You have the right to a hearing before the Board to answer the Notice of Intended Action and Accusation and present evidence and argument on all issues involved, either personally or through counsel. NRS 233B.121; NRS 233B.127(3); NRS 622A.300(1) and (3); NRS 639.241. To do so, you must complete and file two (2) copies of the Answer and Notice of Defense served herewith, to be received by the Board's Reno office located at 985 Damonte Ranch Parkway – Suite 206, Reno, Nevada 89521, within twenty (20) days of your receipt of this Statement and Notice, and of the Notice of Intended Action and Accusation served within. NRS 639.320; NRS 639.243.

**III.**

**The Board has scheduled your hearing on this matter for Wednesday, June 5, 2019, at 9:00 a.m. or soon thereafter. The hearing will occur at the Hyatt Place, 1790 East Plumb Lane, Reno, Nevada.**

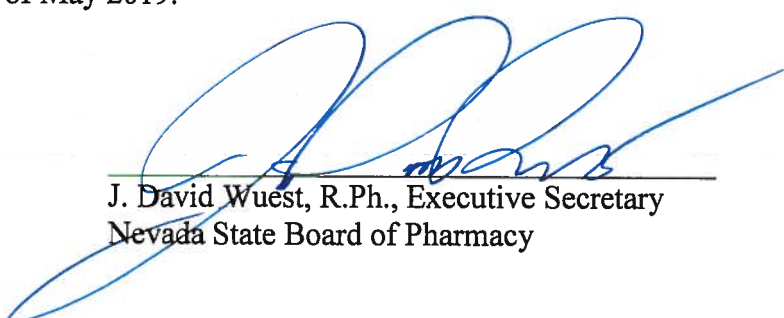
## IV.

Pursuant to NRS 241.033 and 241.034, please be advised that the hearing is a public meeting, and the Board may, without further notice, take administrative action against you if the Board determines that such administrative action is warranted after considering your character, alleged misconduct, professional competence, or physical or mental health. The Board at its discretion may go into closed session to consider your character, alleged misconduct, professional competence, or physical or mental health. You may attend any closed session, have an attorney or other representative of your choosing present during any closed session, and present written evidence, provide testimony, and present witnesses relating to your character, alleged misconduct, professional competence, or physical or mental health during any closed session.

## V.

Your failure to timely file an Answer and Notice of Defense constitutes an admission of the charges and waiver of the right to a hearing. NRS 639.244. If you fail to appear at the hearing and the Board finds that you were given sufficient legal notice of the hearing, the Board may accept the allegations as true and may proceed to consider the case and render a decision. NRS 622A.350.

DATED this 2<sup>nd</sup> day of May 2019.



---

J. David Wuest, R.Ph., Executive Secretary  
Nevada State Board of Pharmacy

## BEFORE THE NEVADA STATE BOARD OF PHARMACY

NEVADA STATE BOARD OF PHARMACY,	)	CASE NO.	18-086-PH-N
	)		
Petitioner,	)		
	)		
v.	)		
	)	ANSWER AND NOTICE OF DEFENSE	
CVS PHARMACY #4691	)		
Certificate of Registration No. PH02471,	)		
	)		
Respondent.	)		

COMES NOW Respondent CVS Pharmacy #4691 ("CVS") and responds to the Notice of Intended Action and Accusation which was filed on May 2, 2019 by the Petitioner, The Nevada State Board of Pharmacy ("Board"). This Response shall also serve as Respondent CVS's Answer and Notice of Defense pursuant to NRS 639.244.

Respondent hereby declares:

1. That a hearing on the Accusation is requested.
2. That, in answer to the Accusation, Respondent CVS admits, denies, and/or alleges as follows:

I.

Respondent CVS admits that CVS #4691 is a pharmacy licensed by the Board, and as such, the Board has jurisdiction over this matter.

II.

Respondent admits the allegations of Paragraph II of the Accusation.

**FACTUAL ALLEGATIONS**

III.

Respondent admits the allegations of Paragraph III of the Accusation.

## IV.

Respondent admits the allegations of Paragraph IV of the Accusation.

## V.

Respondent admits the allegations of Paragraph V of the Accusation.

## VI.

Respondent admits the allegations of Paragraph VI of the Accusation.

## VII.

Respondent admits the allegations of Paragraph VII of the Accusation.

## VIII.

Respondent can neither admit nor deny the allegations of Paragraph VIII of the Accusation.

## IX.

Respondent admits the allegations of Paragraph IX of the Accusation.

## X.

Respondent can neither admit nor deny the allegations of Paragraph X, as it does possess sufficient knowledge or information as to what technician Ochoa may have admitted directly to the Board.

Respondent does not possess any information upon which it could refute the allegations in Paragraph X of the Accusation.

## XI.

Respondent admits the allegations of Paragraph XI of the Accusation.

**FIRST CAUSE OF ACTION**

## XII.

Respondent admits the first paragraph of Paragraph XII of the Accusation, wherein various sections of the NAC are cited. Respondent denies the remainder of Paragraph XII of the Accusation and holds the Petitioner to proof of same.

**SECOND CAUSE OF ACTION****XIII.**

Respondent admits the various sections of the NAC which are cited. Respondent denies the legal allegations in Paragraph XIII of the Accusation and holds the Petitioner to proof of same.

I hereby declare, under penalty of perjury, that the foregoing Answer and Notice of Defense, and all facts therein stated, are true and correct to the best of my knowledge.

Submitted by CVS #4691 on the 20<sup>th</sup> day of May, 2019.

CVS Health

By: 

Brian J. Convery

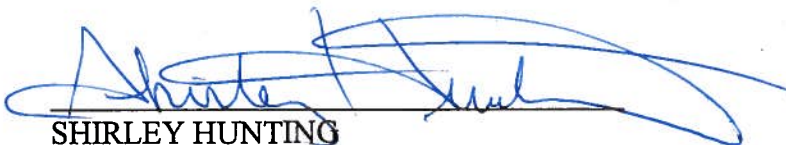
Senior Legal Counsel for CVS Health

Authorized Representative for CVS Pharmacy #4691

**CERTIFICATE OF SERVICE**

I certify that I am an employee of the Nevada State Board of Pharmacy, and that on this 2nd day of May, 2019, I served a true and correct copy of the foregoing document by Certified U.S. Mail to the following:

CVS Pharmacy #4691  
5151 Sparks Blvd.  
Sparks, NV 89436



SHIRLEY HUNTING

**BEFORE THE NEVADA STATE BOARD OF PHARMACY**

<b>NEVADA STATE BOARD OF PHARMACY,</b>	)	<b>CASE NO. 18-086-PH-N</b>
	)	
<b>Petitioner,</b>	)	
<b>v.</b>	)	
	)	<b>STIPULATION AND ORDER</b>
<b>CVS PHARMACY #4691,</b>	)	
<b>Certificate of Registration No. PH02471,</b>	)	
	)	
<b>Respondent.</b>	/	

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Brett Kandt, General Counsel for Petitioner the Nevada State Board of Pharmacy (Board), and Respondent CVS PHARMACY #4691 (“CVS”), Certificate of Registration No. PH02471, by and through counsel, Brian J. Convery, Esq., **HEREBY STIPULATE AND AGREE THAT:**

1. The Board has jurisdiction over Respondent CVS and this matter.
2. On or about May 2, 2019, Board Staff properly served the Notice of Intended Action and Accusation (Accusation) on file in this matter on Respondent CVS.
3. Respondent CVS filed an Answer to the Accusation on or about May 21, 2019.
4. Respondent CVS is fully aware of its right to seek the advice of counsel in this matter and obtained the advice of counsel prior to entering into this Stipulation.
5. Respondent CVS is aware of its right to a hearing on the matters alleged in the Accusation, its right to reconsideration, its right to appeal and any and all other rights which may be accorded to it pursuant to NRS Chapter 233B (Nevada Administrative Procedure Act), NRS Chapter 622A (Administrative Procedure Before Certain Regulatory Bodies), and NRS Chapter 639 (Nevada Pharmacy Act).
6. Conditioned on the acceptance of this Stipulation by the Board, and with the exception of the right to challenge any determination that Respondent CVS has failed to comply with the provisions of Paragraphs 9, 14 and/or 15 below, Respondent CVS hereby freely and



voluntarily waive its rights to a hearing, reconsideration, appeal and any and all other rights related to this action that may be accorded to it by NRS Chapter 233B (Nevada Administrative Procedure Act), NRS Chapter 622A (Administrative Procedure Before Certain Regulatory Bodies), and NRS Chapter 639 (Nevada Pharmacy Act).

7. Respondent CVS admits that evidence exists, and that Board staff prosecuting this case could present such evidence at an administrative hearing, which may be sufficient to establish a factual basis for the violations alleged in the Accusation, *to wit*, that:

A. At the time of the events alleged in the Accusation, Gisela Ochoa (Ochoa), Certificate of Registration No. PT18361, and Jenifer Grove (Grove), Certificate of Registration No. PT11159, were both pharmaceutical technicians registered by the Board and employed by Respondent CVS #4691.

B. Ochoa violated NAC 639.482, NAC 639.485 and NAC 639.910(1) and engaged in unprofessional conduct and conduct contrary to the public interest under NAC 639.945(1)(d) and (i) by dispensing a prescription drug to the wrong patient and performing the point of sale prescription scans and sales transaction under Grove's computer initials.

C. Grove violated NAC 639.482, NAC 639.485 and NAC 639.910(1) and engaged in unprofessional conduct and conduct contrary to the public interest under NAC 639.945(1)(d) and (i) by failing to maintain the security of her password.

D. As the pharmacy/pharmacy owner at which the violations of law alleged herein occurred, CVS #4691 is responsible for the violations committed by Ochoa and Grove pursuant to NRS 639.230(5) and NAC 639.945(2). CVS #4691 is therefore subject to discipline pursuant to NRS 639.210(4) and (12) and NRS 639.255, NAC 639.751 and NAC 639.930.

8. Those violations are plead with particularity in the Accusation, and are grounds for action pursuant to NRS 639.210 and NRS 639.255.

9. Based upon the Accusation and the foregoing admissions, the Board and Respondent CVS stipulate to the following penalties. Respondent CVS Pharmacy #4691, Certificate of Registration No. PH02471, shall:

A. Pay a fine of Five-Hundred Dollars (\$500.00) associated with the violations indicated above; and

B. Pay Seven-Hundred Fifty Dollars (\$750.00) to partially reimburse the Board for reasonable attorney's fees and costs incurred in investigating and prosecuting this matter.

10. Any failure by Respondent CVS to comply with the terms of this Order may result in issuance by the Executive Secretary of an order to show cause directing Respondent CVS to appear before the Board at the next regularly-scheduled meeting for a show cause hearing. If such a hearing results in a finding of a violation of this Order by Respondent CVS, the Board may impose additional discipline upon Respondent CVS not inconsistent with the provisions of NRS Chapter 639.

11. General Counsel will present this Stipulation to the Board for approval pursuant to NRS 622.330 at the Board's regularly scheduled public meeting on March 6, 2019, in Reno, Nevada. Respondent CVS's authorized representative(s) will appear at the meeting to answer questions from the Board Members and/or Board Staff. The Board Members and Staff may discuss and deliberate regarding this Stipulation, even if Respondent CVS or its counsel are not present at the meeting.

12. The Board has discretion to accept this Stipulation, but it is not obligated to do so. If this Stipulation is approved by the Board it shall be a public record pursuant to NRS 622.330.

13. If the Board rejects any part or all of this Stipulation, and unless they reach an alternative agreement on the record during the hearing, the parties agree that a full hearing on the merits of this matter may be heard by the Board. The terms and admissions herein may not be used or referred to in a full hearing on the merits of this matter.

14. Upon approval of this Stipulation by the Board, Respondent CVS shall pay the fine agreed to herein by *cashier's check* or *certified check* or *money order* made payable to "State of Nevada, Office of the Treasurer," to be received by the Board's Reno office located at 985 Damonte Ranch Parkway – Suite 206, Reno, Nevada 89521, within thirty (30) days of the effective date of this Order.

15. Upon approval of this Stipulation by the Board, Respondent CVS shall pay the administrative fee agreed to herein by *cashier's check* or *certified check* or *money order* made payable to "Nevada State Board of Pharmacy," to be received by the Board's Reno office located at 985 Damonte Ranch Parkway – Suite 206, Reno, Nevada 89521, within thirty (30) days of the effective date of this Order;

16. Subject to the approval of this Stipulation by the Board, the Board and Respondent CVS agree to release each other from any and all additional claims arising from the facts set forth in the Accusation on file herein, whether known or unknown that might otherwise have existed on or before the effective date of this Order.

**Respondent CVS has fully considered the charges and allegations contained in the *Notice of Intended Action and Accusation* in this matter, and the terms of this Stipulation, and has freely and voluntarily agreed to the terms set forth herein, and waived certain rights, as stated herein.**

**AGREED:**

Signed this \_\_\_\_ day of June, 2019

Signed this \_\_\_\_ day of June, 2019

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**AUTHORIZED REPRESENTATIVE  
CVS Pharmacy #4691  
Certificate of Registration No. PH02471**

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**BRETT KANDT, ESQ.  
General Counsel  
Nevada State Board of Pharmacy**

**DECISION AND ORDER**

The Nevada State Board of Pharmacy hereby adopts the foregoing Stipulation as its decision as to Respondent CVS Pharmacy #4691, Certificate of Registration No. PH02471, in Case No. 18-086-PH-N and hereby orders that the terms of the foregoing Stipulation be made effective upon execution below.

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Dated

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Jason Penrod, President  
Nevada State Board of Pharmacy