

BEFORE THE NEVADA STATE BOARD OF PHARMACY

NEVADA STATE BOARD OF PHARMACY

NEVADA STATE BOARD OF PHARMACY,

Petitioner,

v.

JESSICA NGUYEN, RPH

Certificate of Registration No. 15397

MARTIN O. CHIBUEZE, RPH

Certificate of Registration No. 17555

SPRING VALLEY PHARMACY

Certificate of Registration No. PH02375

Respondents.

CASE NO. 16-015-RPH-A-S
16-015-RPH-B-S
16-015-PH-S

NOTICE OF INTENDED ACTION
AND ACCUSATION

Larry L. Pinson, 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 639.241.

JURISDICTION

I.

The Nevada State Board of Pharmacy (Board) has jurisdiction over this matter and these Respondents because at the time of the alleged events, Respondent Jessica Nguyen (Ms. Nguyen), Certificate of Registration No. 15397, and Respondent Martin O. Chibueze (Mr. Chibueze), Certificate of Registration No. 17555, were pharmacists licensed by the Board, and Respondent Spring Valley Pharmacy (Spring Valley), Certificate of Registration No. PH02375, was a pharmacy licensed by the Board.

FACTUAL ALLEGATIONS

II.

On or about February 5, 2016, L.T. saw APRN, M.G. at the Mind Body Solutions Clinic. M.G. prescribed a quantity of #120 Adderall 10 mg. tablets with instructions to take one tablet four times daily.

III.

L.T. tendered the prescription to Spring Valley the day she received it. Spring Valley assigned it Prescription No. 26542 and dispensed the medication the same day.

IV.

Later that evening, L.T. opened the medication bottle and discovered that it contained only thirty (30) tablets of Adderall, instead of the one-hundred and twenty (120) tablets as prescribed.

V.

L.T. contacted Spring Valley to report the Adderall shortage.

VI.

Pharmacist Martin Chibueze at Spring Valley informed L.T. that he checked the pharmacy's Adderall 10 mg. tablet inventory and he found no discrepancies. He also said that he would view the video of L.T.'s prescription being filled.

VII.

In a written statement, Mr. Chibueze states that he conducted a physical count of Spring Valley's Adderall 10 mg. tablets and found no discrepancies.

VIII.

He also stated that Spring Valley's video system overrides recorded video every forty-eight hours, so he was not able to view the filling of L.T.'s prescription.

IX.

When L.T. was unable to resolve the medication shortage with Spring Valley, she reported the incident to law enforcement and filed a police report.

X.

During Board Staff's investigation of Prescription No. 26542 and L.T.'s complaint, the Board Investigator discovered that Spring Valley's pharmacy workflow software does not depict the required data elements of a lawful prescription.

XI.

The Board Investigator found substantial discrepancies in Spring Valley's electronic Schedule II perpetual inventory recordkeeping. For example:

1. Amphetamine Salts 10 mg NDC 00555-0972-02: Prescription No. 26542 appears on this inventory four times, once on February 5, 2016, and three times on February 8. Two of those entries show that Spring Valley dispensed the medication, and two show that Spring Valley added the same amount (120 tablets) back into its inventory. The inventory showed that Spring Valley should have had 86 tablets in its inventory on March 15, 2016. The Board Investigator conducted a count of the Amphetamine Salts 10 mg tablets on March 15, 2016, and counted 94.

2. Amphetamine 10 mg ER, NDC 000555-07870-2: Prescription No. 26542 appears on this inventory twice. It shows that Spring Valley dispensed 120 tablets on February 8, 2016, and then received the same amount back into its inventory. The inventory showed that Spring Valley should have had 195 tablets in its inventory on March 15, 2016. The Board Investigator counted and documented 215 tablets.

3. Amphetamine 10 mg NDC 45963-0745-11: Prescription No. 26542 appears on this inventory once, when Spring Valley purportedly dispensed 120 tablets. The inventory shows that Spring Valley should have had count of -75 tablets. The Board Investigator counted 23 tablets.

XII.

According to Spring Valley's workflow records for Prescription No. 26542, pharmaceutical technician Rolando (Mr. Urrutia) entered the prescription data.

XIII.

Spring Valley provided the Board Investigator a copy of the workflow screen, "Rx's Checked", for Prescription No. 26542, on March 15, 2016. The record failed to capture the fill technician, verifying pharmacist, prescription verification date/time, counseling pharmacist, and counseling date/time.

XIV.

On March 24, 2016, Spring Valley provided a second copy of the "Rx's Checked" record for Prescription No. 26542. That copy was identical to the March 15th copy except for an additional entry, "Martin Chibueze", in data field "IOU Pharmacist".¹

XV.

The information in Spring Valley's records reflect an inconsistency as to the NDC for Prescription No. 26542. The NDC on L.T.'s patient profile is 45963-0745-11. The NDC on the label of the bottle dispensed to L.T. is 00555-0972-02.

XVI.

The label on the bottle did not include an expiration date for the medication.

XVII.

Spring Valley's electronic perpetual inventories on March 15, 2016, showed an inventory of negative counts for Amphetamine 10 mg. tablets. Those negative counts were not consistent with the Board Inspector's physical counts of that medication at the pharmacy.

XVIII.

Spring Valley's records do not accurately show who was working at the time the pharmacy filled Prescription No. 26542. Respondent Ms. Nguyen purportedly worked from 8:00 AM until 12:00 PM, which includes the time the pharmacy filled Prescription No. 26542. The

¹ "IOU" indicates a remaining medication fill from a prior partial fill.

pharmacy's Time Clock Report does not reflect that Ms. Nguyen worked in the pharmacy during those times.

XIX.

At the time Spring Valley filled Prescription No. 26542, pharmaceutical technician Rolando Urrutia worked at the pharmacy and participated in at least the data entry process. Urrutia left Spring Valley at short time later. Spring Valley and Ms. Nguyen failed to report Mr. Urrutia's employment with and termination from the pharmacy.

XX.

Pharmacy records show that Mr. Chibueze verified Prescription No. 26542 and sold the medication to L.T. There is no record that he provided counseling, and L.T. reported that she did not receive counseling for that prescription. Spring Valley could not initially provide a counseling log for the prescription. Ms. Nguyen later faxed over a duplicate of the patient's signature with the words "Counseling Log" handwritten in the margin.

XXI.

In the absence of critical records, the Board Investigator was unable to reliably determine whether Spring Valley accurately filled Prescription No. 26542.

FIRST CAUSE OF ACTION
(Spring Valley Pharmacy)

XXII.

NAC 639.930(3) and (4) require a computerized system in a pharmacy to make a record of each modification or manipulation of the information of each prescription in the system. NAC 639.935(g)(3) and (4) likewise require a pharmacy's computerized system have the capability to print "[t]he history of each prescription filled by the pharmacy, including, without limitation, a record of each [m]odification or manipulation of information concerning the prescription; and . . . [o]ther act related to the processing, filling or dispensing of the prescription."

XXIII.

NAC 639.751 requires a pharmacy's computer system to accurately capture the signature, initials or name of the pharmacist or technician who participates in each step of the filling process of a prescription.

XXIV.

Spring Valley Pharmacy's computer system does not accurately capture and retain the information required by NAC 639.751, NAC 639.930(3) and (4), and NAC 639.935(g), as demonstrated by the system's failure to capture, retain, and print the required information for Prescription No. 26542. Spring Valley Pharmacy therefore violated each of those regulations and is subject to discipline pursuant to NRS 639.210 and/or NRS 639.255.

SECOND CAUSE OF ACTION

(Spring Valley Pharmacy)

XXV.

NAC 639.751(1)(b) and (2), and NAC 639.930(3) require a pharmacy computer system to have adequate safeguards to identify whether information in the system concerning a prescription has been modified or manipulated, and, where information was modified or manipulated, identify the manner, date and person who modified or manipulated the information. NAC 639.930(4) and (5) requires the pharmacy's computer system to maintain the information identified per NAC 639.930(3) and to prevent the removal of that information and the record of a prescription once the system assigns a number to the prescription.

XXVI.

By failing to maintain adequate safeguards in its computer system to identify the information required by NAC 639.751(1)(b) and (2) and NAC 639.930(3) as to Prescription No. 26542, and by failing to prevent the removal of that information as required by NAC 639.930(4)

and (5), Spring Valley violated each of those regulations and is subject to discipline pursuant to NRS 639.210 and/or NRS 639.255.

THIRD CAUSE OF ACTION

(Spring Valley Pharmacy)

XXVII.

NRS 639.2801 requires all prescriptions to be dispensed in a container with a label affixed stating, among other things, the date, the manufacturer name or NDC number, the expiration date or BUD, the strength/concentration of the drug, certain warning labels and the directions for use.

XXVIII.

By failing to properly label the container for Prescription No. 26542 to include the accurate manufacturer name or NDC number, or expiration date, Spring Valley violated NRS 639.2801 and is subject to discipline pursuant to NRS 639.210 and/or NRS 639.255.

FOURTH CAUSE OF ACTION

(Spring Valley Pharmacy)

XXIX.

“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.” NAC 639.945(1)(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. NRS 639.210(4).

XXX.

Additionally, “[a] drug or device shall be deemed to be misbranded if its labeling is false or misleading in any particular.” NRS 585.410. “The manufacture, sale or delivery, holding or offering for sale of any food, drug, device or cosmetic that is adulterated or misbranded” is prohibited in the State of Nevada. NRS 585.520.

XXXI.

By placing the NDC 00555-0972-02 on the label of the bottle it dispensed to L.T., and recording a different NDC (45963-0745-11) in L.T.'s patient profile, Spring Valley engaged in unprofessional conduct and violated NRS 585.520. It is therefore subject to discipline pursuant to NRS 639.210(4) and/or (12), as well as NRS 639.255.

FIFTH CAUSE OF ACTION
(Spring Valley Pharmacy)

XXXII.

NAC 639.485(1) requires each pharmacy to maintain records of the receipt, distribution and destruction of all controlled substance handled by the pharmacy. NAC 639.485(2) requires that each "pharmacy shall maintain a perpetual inventory of any controlled substance listed in schedule II." *See also* NRS 453.246 (requiring pharmacies to "keep records and maintain inventories" in conformance with the record keeping and inventory requirements of state and federal law).

XXXIII.

Spring Valley violated those statutes and regulations by failing to maintain an accurate perpetual inventory of its schedule II controlled substances, in particular Amphetamine Salts, Amphetamine 10 mg ER and Amphetamine 10 mg, as alleged herein. The pharmacy's inventory records on March 15, 2016, showed negative numbers of each of those substances, which also did not conform with the Board Investigator's physical account of those substances, and which the pharmacy staff could not explain. Additionally, Prescription No. 26542 appeared on three separate Spring Valley inventories.

SIXTH CAUSE OF ACTION
(Spring Valley Pharmacy)

XXXIV.

NAC 639.245 requires that for each pharmacy, “[a] written record must be kept available for inspection showing the pharmacists, pharmaceutical technicians and pharmaceutical technicians in training on duty during the hours of business.” By failing to keep a written record that reflects when Ms. Nguyen is on duty at Spring Valley Pharmacy, Spring Valley Pharmacy violated that regulation and is therefore subject to discipline pursuant to NRS 639.210(4) and/or (12), as well as NRS 639.255.

SEVENTH CAUSE OF ACTION
(Spring Valley Pharmacy)

XXXV.

NAC 639.540 requires the owner, manager or operator of a pharmacy to, “within 10 days after the employment or termination of employment of a registered pharmacist, intern pharmacist, pharmaceutical technician or pharmaceutical technician in training, give written notice to the Executive Secretary of that employment or termination. The notice must include the name, residential address and certificate number of the employee or former employee.”

By failing to give the Board written notice of pharmaceutical technician Roland Urrutia’s employment and subsequent termination, Spring Valley Pharmacy violated that regulation and is therefore subject to discipline pursuant to NRS 639.210(4) and/or (12), as well as NRS 639.255.

EIGHTH CAUSE OF ACTION
(Martin Chibueze)

XXXVI.

NRS 639.266(1) requires a pharmacist to “communicate matters which will enhance therapy through drugs with the patient or a person caring for the patient.” NAC 639.707(1) and (2) further require counseling for all new prescriptions and provide a list of elements to be included as part of proper counseling. Additionally, NAC 639.707(6) requires the pharmacist to create a record that counseling was either refused or occurred.

XXXVII.

Here, there is no record that Mr. Chibueze provided adequate counseling to L.T. By failing to provide counseling for L.T.'s new prescription, and to create some documentation regarding whether counseling occurred, Mr. Chibueze violated NRS 639.266(1), NAC 639.707(1), (2) and (6), as well as NAC 639.945(1)(i), which violations are grounds for action pursuant to NRS 639.210(4), (11) and/or (12), and under NRS 639.255.

NINTH CAUSE OF ACTION
(Spring Valley Pharmacy)

XXXVIII.

NAC 639.707(6) requires a pharmacist to create a record at the time a medication is dispensed to indicate whether counseling occurred or was refused by the patient. NAC 639.751(1)(b) and (2), and NAC 639.930(3) require a pharmacy computer system to have adequate safeguards to identify whether information in the system concerning a prescription has been modified or manipulated, and, where information was modified or manipulated, identify the manner, date and person who modified or manipulated the information. Additionally, NAC 639.930(4) and (5) requires the pharmacy's computer system to maintain the information identified per NAC 639.930(3) and to prevent the removal of that information and the record of a prescription once the system assigns a number to the prescription.

XXXIX.

Here, Spring Valley's computer system failed to create and retain a record of whether Mr. Chibueze provided counseling to L.T. Thus, Spring Valley violated NAC 639.707(6) and/or NAC 639.930(3), (4) and/or (5), which violations are grounds for action pursuant to NRS 639.210(4), (11) and/or (12), and under NRS 639.255.

TENTH CAUSE OF ACTION

(Jessica Nguyen)

XL.

As the managing pharmacist/pharmacist in charge of Spring Valley at the time of each of the violations alleged herein, Respondent Ms. Nguyen is responsible for those violations, including those of her employees. See NRS 639.0087, NRS 639.210(15), NRS 639.220(3)(c), NAC 639.510(2), NAC 639.702; and NAC 639.910(2). Ms. Nguyen's pharmacist license, Certificate of Registration No. 15397, is therefore subject to discipline, suspension, or revocation pursuant to those statutes and regulations, NRS 639.210(4), (9), (11) - (12), (15) and/or (17), as well as NRS 639.230(5) and/or NRS 639.255.

ELEVENTH CAUSE OF ACTION

(Spring Valley Pharmacy and Jessica Nguyen)


XLI.

As the pharmacy and owner of the pharmacy in which the violations alleged herein occurred, Respondents Spring Valley and Ms. Nguyen, respectively, are each responsible for the violations set forth above pursuant to NAC 639.702 and NAC 639.945(2). Each of their licenses, Certificate of Registration No. 15397 (Ms. Nguyen), and Certificate of Registration No. PH02375 (Spring Valley) are therefore subject to discipline pursuant to NRS 639.210(4), (9), (11) - (12), (15) and/or (17), as well as NRS 639.230(5) and/or NRS 639.255.

XLII.

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

DATED this 14 day of March 2017.



J. David Wuest, Deputy Executive Secretary
Nevada State Board of Pharmacy on behalf of
Larry L. Pinson, Executive Secretary

NOTICE TO RESPONDENTS

You have the right to show the Nevada State Board of Pharmacy that your conduct, as alleged above, complies with all lawful requirements regarding your certificate of registration. To do so, you must mail to the Board within 15 days of your receipt of this Notice of Intended Action and Accusation a written statement showing your compliance.

BEFORE THE NEVADA STATE BOARD OF PHARMACY

NEVADA STATE BOARD OF PHARMACY,

Petitioner,

v.

JESSICA NGUYEN, RPH
Certificate of Registration No. 15397

Respondent.

) STATEMENT TO THE RESPONDENT
) NOTICE OF INTENDED ACTION
) AND ACCUSATION
) RIGHT TO HEARING

) CASE NO. 16-015-RPH-A-S

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, a Notice of Intended Action and Accusation has been filed with the Board by the Petitioner, Larry L. Pinson, 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 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. Should you desire a hearing, it is required that you complete two copies of the Answer and Notice of Defense documents served herewith and file said copies with the Board within fifteen (15) days of receipt of this Statement and Notice, and of the Notice of Intended Action and Accusation served within.


III.

The Board has scheduled your hearing on this matter for Thursday, April 13, 2017, at 9:00 a.m., or soon thereafter, at the Hilton Garden Inn, 7830 S. Las Vegas Blvd., Las Vegas, Nevada.

IV.

Failure to complete and file your Notice of Defense with the Board and thereby request a hearing within the time allowed shall constitute a waiver of your right to a hearing in this matter and give cause for the entering of your default to the Notice of Intended Action and Accusation filed herein, unless the Board, in its sole discretion, elects to grant or hold a hearing nonetheless.

DATED this 14th day of March 2017.



J. David Wuest, Deputy Executive Secretary
Nevada State Board of Pharmacy on behalf of
Larry L. Pinson, Executive Secretary

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 March 2017.

JESSICA NGUYEN, RPH

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 March 2017.

MARTIN O. CHIBUEZE, RPH

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 March 2017.

Type or print name

AUTHORIZED REPRESENTATIVE FOR
SPRING VALLEY PHARMACY