

MAY 31 2018

NEVADA STATE BOARD
OF PHARMACY

BEFORE THE NEVADA STATE BOARD OF PHARMACY

NEVADA STATE BOARD OF PHARMACY,	)	CASE NO. 16-077-RPH-A-S
	)	16-077-RPH-B-S
Petitioner,	)	16-077-PH-S
v.)	
)	
RICHARD ANDERSON, RPH)	
Certificate of Registration No. 10763,	)	NOTICE OF INTENDED ACTION
	)	AND ACCUSATION
NED MONJE QUADRA, RPH)	
Certificate of Registration No. 15235)	
)	
WALMART PHARMACY #10-1560)	
Certificate of Registration No. PH00800)	
)	
Respondents.	/	

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 Richard Anderson (Anderson), Certificate of Registration No. 10763, was a pharmacist registered by the Board, and Respondent Walmart Pharmacy #10-1560, Certificate of Registration No. PH00800 (Walmart), was a pharmacy registered by the Board.

FACTUAL ALLEGATIONS

II.

On August 25, 2016, physician assistant B.S. prescribed medications to N.P. and her two daughters. N.P. received two (2) prescriptions, daughter A.P. received two (2) prescriptions and daughter A.T. received three (3) prescriptions.

III.

N.P. tendered the seven (7) prescriptions to Walmart the day B.S. wrote them, where pharmaceutical technician Brenda Alferos (Alferos) entered the data for each prescription in Walmart's computer system.

IV.

During data entry, Alferos mistakenly entered all seven prescriptions under N.P.'s name and patient profile. Walmart processed and filled four of the prescriptions that evening.

V.

At the point of sale, Alferos realized that two of the filled prescriptions with N.P.'s name on the label were actually for N.P.'s daughter A.T. Alferos presented the two erred prescriptions to Anderson for correction.

VI.

Alferos did not detect that another one of the four prescriptions filled and labeled under N.P.'s name, Prescription No. 7732906, was a medication prescribed to daughter A.P.

VII.

N.P. picked up Prescription No. 7732906 that evening.

VIII.

The erred medication dispensed to N.P. was Naproxen 375mg tablets with instructions to take one (1) tablet by mouth every twelve (12) hours as needed.

IX.

N.P. ingested the medication for approximately two (2) days and began to experience severe stomach pains. N.P. discovered that Walmart dispensed the wrong medication to her.

X.

Anderson was the verifying pharmacist for Prescription No. 7732906. Anderson failed to detect the error when he verified data entry and the final product as accurate.

XI.

Anderson was also the counseling pharmacist. Walmart's computer patient counseling field documents that counseling was refused.

XII.

Counseling was not offered.

FIRST CAUSE OF ACTION

(Respondent Anderson)

XIII.

Nevada Administrative Code (NAC) 639.945(1)(d) defines unprofessional conduct to include the failure by a licensee to follow strictly the instructions of a prescriber when filling, labeling and dispensing a prescription. Unprofessional conduct also includes performing duties in an "incompetent, unskillful or negligent manner". *See* NAC 639.945(1)(i).

Respondent Anderson engaged in unprofessional conduct in violation of NAC 639.945(1)(d) and (i) by verifying Prescription No. 7732906 as accurate, when it was mislabeled with the wrong patient name. That conduct caused patient N.P. to ingest the wrong medication for approximately two (2) days.

SECOND CAUSE OF ACTION

(Respondent Anderson)

XIV.

NRS 639.266 requires a pharmacist, on receipt of a prescription and after review of the patient's record, to communicate with the patient, or a person caring for the patient, matters that will enhance the patient's therapy through drugs. NAC 639.707(1) and (2) require that discussion to include, among other things, the name of the drug, dosage and administration instructions, the intended use of the drug, common side effects, and other information that is necessary for the safe and effective use of the drug. Further, NAC 639.945(1)(i) defines unprofessional conduct as performing duties in an "incompetent, unskillful or negligent manner".

Anderson violated NRS 639.266, NAC 639.707(1) and (2), and NAC 639.945(1)(i), when he failed to counsel N.P. regarding Prescription No. 7732906, which was a new prescription for N.P. That error, combined with other errors within the pharmacy, caused the pharmacy to dispense the medication to the wrong patient.

THIRD CAUSE OF ACTION

(Respondent Quadra)

XV.

As the managing pharmacist/pharmacist in charge of Walmart Pharmacy #10-1560 at the time of each of the violations alleged herein, respondent Quadra is responsible for those violations, including those of his employees. See NRS 639.0087, NRS 639.210(15), NRS 639.220(3)(c), NAC 639.702 and NAC 639.910(2).

FOURTH CAUSE OF ACTION

(Respondent Walmart #10-1560)

XVI.

As the pharmacy in which the violations alleged above occurred, Walmart Pharmacy #10-1560 is responsible for the actions of Respondent Anderson and pharmaceutical technician Alferos pursuant to NRS 639.230(5), NAC 639.945(2) and/or NAC 639.702.


XVII.

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

XVIII.

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.

Signed this 31st day of May 2018.


Larry L. Pinson, Pharm.D., 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 regarding your certificate of registration. To do so, you must mail to the Board within 20 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,	)	ANSWER AND
	)	NOTICE OF DEFENSE
Petitioner,)	
v.)	
)	
RICHARD ANDERSON, RPH	)	CASE NO. 16-077-RPH-A-S
Certificate of Registration No. 10763)	
)	
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 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 June 2018.

RICHARD ANDERSON, R.PH.

FILED

JUN 21 2018

NEVADA STATE BOARD
OF PHARMACY

BEFORE THE NEVADA STATE BOARD OF PHARMACY

NEVADA STATE BOARD OF PHARMACY,

) ANSWER AND
) NOTICE OF DEFENSE

Petitioner,

v.

NED MONJE QUADRA, RPH

) CASE NO. 16-077-RPH-B-S

Certificate of Registration No. 15235

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 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").

Respondent objects to all charges against him specifically the third cause of action.

Respondent objects to the charges relating to violation of NRS 639.210(15), NAC 639.702 & NAC 639.910(2).

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

Respondent denies any and all allegations against him as stated in the Third cause of actions.

Respondent denies any violations by him relating to NRS 639.210(15), NAC 639.702 and NAC 639.910(2).

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 18 day of June 2018.



NED MONJE QUADRA, R.PH.

FILED

JUN 28 2018

NEVADA STATE BOARD
OF PHARMACY

HAL TAYLOR, ESQ.

223 Marsh Avenue
RENO, NV 89509

TEL. (775) 825-2223, FAX (775) 329-1113

BEFORE THE NEVADA STATE BOARD OF PHARMACY

NEVADA STATE BOARD OF PHARMACY, CASE NO. 13-077- RPH - A-S

Petitioner,

16-077- RPH - B-S

16-077 - PH - S

v.

RICHARD ANDERSON, RPH
Certificate of Registration No. 10763,NED MOJE QUADRA, RPH
Certificate of Registration No. 15235WALMART PHARMACY #10-1560
Certificate of Registration No.: PH00800,

Respondents.

RESPONDENT WALMART PHARMACY #10-1560's
ANSWER AND NOTICE OF DEFENSE

Respondent, WALMART PHARMACY #10-1560 ("Walmart"), through its representative, Hal Taylor, Esq., in answer to the Notice of Intended Action and Accusation ("Notice") in this case, states as follows:

Jurisdiction

I.

Admitted.

FACTUAL ALLEGATIONS

II.

Admitted that the prescriptions submitted to Walmart are consistent with these allegations.

III.

Admitted that pharmaceutical technician Brenda Alferos ("Alferos") received the

HAL TAYLOR, ESQ.
223 Marsh Avenue
RENO, NV 89509
TEL. (775) 825-2223, FAX (775) 329-1113

1 prescriptions tendered to Walmart by N.P. and entered the data for each prescription
2 into Walmart's computer system. Entry of these prescriptions also including scanning
3 each prescription so that its image appears on the screen for review and comparison
4 during the filling process. From this point forward, the scanned image of each
5 prescription was shown on the computer screen.

6 IV.

7 Admitted that, despite having the prescriptions tendered by N.P. in hand, that
8 Alferos mistakenly entered all seven prescriptions under N.P.'s name and patient
9 profile. Admitted that four of the prescriptions were filled the same evening.
10 Respondent Richard Anderson ("Anderson") performed a 4-Point Check/Input
11 Verification on all four of these prescriptions. During this process, Anderson had
12 scanned images of each of the prescriptions available for review and comparison on
13 the computer screen.

14 V.

15 Admitted that at the point of sale, N.P. mentioned three different patient names
16 and dates of birth to Alferos. Admitted that upon reviewing the four filled prescriptions
17 after receiving this information, that Alferos realized that two of the four filled
18 prescriptions with N.P. identified as the patient were actually prescriptions for N.P.'s
19 daughter, A.T. Admitted that Alferos presented to Respondent Anderson the two erred
20 prescriptions for correction. Anderson corrected these two prescriptions.

21 VI.

22 Admitted that Alferos failed to detect that another one of the four filled
23 prescriptions filled and labeled under N.P.'s name, Prescription No. 7732906, was
24 medication that was actually prescribed to N.P.'s daughter, A.P.

25 VII.

26 Admitted that N.P. picked up Prescription No. 7732906 that evening.

27 VIII.

28 Admitted.

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223 Marsh Avenue
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IX.

Walmart has no direct knowledge of N.P.'s ingestion of the medication or its alleged physical consequences, and therefore cannot respond to these allegations. Admitted that Prescription No. 7732906 was wrongly dispensed to N.P.

X.

Admitted that Respondent Anderson was the verifying pharmacist for Prescription No. 7732906, and that he failed to detect the patient error when he verified data entry and final product as accurate as part of Walmart's 4-Point Check/Input Verification despite having the image of the prescription on the computer screen for review and comparison. Further answering, even after Alferos brought to Anderson's attention that two of the four filled prescriptions with N.P. identified as the patient were actually prescriptions for N.P.'s daughter, Anderson still failed to identify the patient identification error made on Prescription No. 7732906.

XI.

Admitted that Anderson was the counseling pharmacist. Walmart's patient counseling records indicate that counseling was "refused."

XII.

Walmart has no direct knowledge of whether counseling was offered or not to N.P. , nor whether it was refused or not. Respondent Anderson is no longer a pharmacist with Walmart.

Further answering, Respondent Anderson wrote a statement for submission to the Board that described details of his purported counseling of N.P. However, that statement is at odds with the counseling information that Anderson placed into Walmart's system regarding counseling of N.P. Because the prescription being filled for N.P. was a new prescription, Anderson was required to offer counseling on Prescription No. 7732906. If Anderson did not offer counseling, he did so in violation of Walmart's policies and procedures. Walmart pharmacists are required to accurately

and timely enter the results of offers to counsel into Walmart's counseling records.

FIRST CAUSE OF ACTION

(Respondent Anderson)

XIII.

These allegations do not require a response by Walmart.

SECOND CAUSE OF ACTION

(Respondent Anderson)

XIV.

These allegations do not require a response by Walmart.

THIRD CAUSE OF ACTION

(Respondent Quadra)

XV.

These allegations do not require a response by Walmart.

FOURTH CAUSE OF ACTION

(Respondent Walmart #10-1560)

XVI.

Walmart's computer system provides a scanned image of the prescription at each state of filling and checking, including Walmart's 4-Point Check/Input Verification process, for review and comparison. Walmart's investigation of the allegations in this case has confirmed that the pharmacy technician initially placed the wrong patient name on five of seven prescriptions, and that the pharmacist failed to note that three of four prescriptions reviewed in his 4-Point Check/Input Verification were for the wrong patient, including one prescription that he reviewed twice. The pharmacist also entered counseling information into the Walmart counseling records that is inconsistent with the statement that he filed with the Board.

Walmart #10-1560 denies that it should be held strictly responsible and subject

HAL TAYLOR, ESQ.
223 Marsh Avenue
RENO, NV 89509
TEL. (775) 825-2223, FAX (775) 329-1113

1 to suspension or revocation in violation of NRS 639.230(5) under these facts for errors
2 made by personnel in the pharmacy, absent any action by Walmart #10-1560 that
3 contributed to the alleged violations.

4 Walmart #10-1560 denies that it should be held strictly responsible as the owner
5 of the pharmacy in violation of NAC 639.945(2) under these facts for the acts of its
6 personnel absent any action by Walmart #10-1560 that contributed to the alleged
7 violations.

8 Walmart #10-1560 denies that it knew or should have known of the errors of
9 pharmacy technician Alferos alleged in this Accusation, and therefore, Walmart #10-
10 1560 denies that it violated NAC 639.702.

11 XVII.

12 Walmart #10-1560 denies that under these facts that it should be held strictly
13 responsible for any specific unprofessional conduct or conduct contrary to the public
14 interest alleged in this Accusation in violation of NRS 639.210(4) that might subject it to
15 suspension of revocation absent any action by Walmart #10-1560 that contributed to
16 the alleged violations.

17 Walmart #10-1560 denies that it violated, attempted to violate, assisted or
18 abetted in the violation of or conspired to violate any of the provisions of NRS Chapter
19 639 or any law or regulation relating to drugs,...the practice of pharmacy, or *knowingly*
20 permitted, allowed, condoned or failed to report a violation of any of the provisions of
21 NRS Chapter 639, or any law or regulation relating to drugs,...or the practice of
22 pharmacy committed by the holder of a certificate, license, or registration in violation of
23 NRS 639.210(12). (Emphasis added.)

24 Walmart #10-1560 denies that it should be held strictly responsible and subject
25 to suspension or revocation for any violation of any provision of NRS Chapter 639 by a
26 managing pharmacist or by personnel of the pharmacy under the supervision of the
27 managing pharmacist in violation of NRS 639.230(5) under these facts absent any act
28 by Walmart #10-1560 that contributed to the violations alleged in this Accusation.

1 **AFFIRMATIVE DEFENSE**

2 Had Walmart's policies and procedures been followed, the errors alleged would
3 not have occurred, or at least have been detected in the Walmart prescription review
4 process, and corrected before the prescriptions were dispensed, and therefore Walmart
5 should not be held responsible for any violations alleged herein.

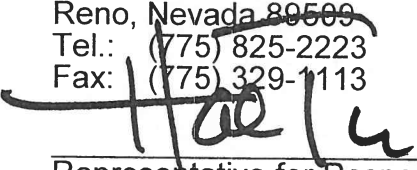
6 WHEREFORE, Respondent Walmart #10-1560, prays for dismissal of the
7 accusations against it.

8 **AFFIRMATION PURSUANT TO NRS 239B.030**

9 By signature below, the undersigned affirms that the preceding document does
10 not contain the social security number of any person.

11 Dated: June 28, 2018

12 Hal Taylor, Esq.
13 233 Marsh Avenue
14 Reno, Nevada 89509
15 Tel.: (775) 825-2223
16 Fax: (775) 329-1113

17 
18 _____
19 Representative for Respondent
20 Walmart Pharmacy #10-1560
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HAL TAYLOR, ESQ.
233 Marsh Avenue
RENO, NV 89509
TEL. (775) 825-2223, FAX (775) 329-1113

1 I hereby declare, under penalty of perjury, that the foregoing Respondent
2 Walmart #10-1560's Answer and Notice of Defense, and all facts therein stated, are
3 true and correct to the best of my knowledge.

4 Dated this ____ day of June 2018.

5 Walmart #10-1560

6 By:

7 Deborah C Mack
8 Authorized Representative for
9 Walmart Pharmacy #10-1560

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HAL TAYLOR, ESQ.

223 Marsh Avenue

RENO, NV 89508

TEL. (775) 825-2223, FAX (775) 329-1113

CERTIFICATE OF SERVICE

On this date, the undersigned, an employee of Hal Taylor, Esq., delivered a copy of the attached Respondent Walmart Pharmacy #10-1560's Answer and Notice of Defense upon the following:

Nevada State Board of Pharmacy
411 W. Plumb Ln.
Reno, NV 89509

Attn: Larry L. Pinson
Executive Secretary

Dated: June 28, 2018.



Hal Taylor, Esq.

HAL TAYLOR, ESQ.
223 Marsh Avenue
RENO, NV 89509
TEL. (775) 825-2223, FAX (775) 329-1113

MAY - 1 2018

NEVADA STATE BOARD
OF PHARMACY**BEFORE THE NEVADA STATE BOARD OF PHARMACY**

NEVADA STATE BOARD OF PHARMACY,	)	CASE NO. 17-101-CS-S
)	
Petitioner,	)	NOTICE OF INTENDED ACTION
v.	)	AND ACCUSATION
)	
IVAN GOLDSMITH, M.D.,)	
Certificate of Registration No. CS20816, PD00413,)	
)	
Respondent.	/	

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 this respondent because at the time of the events alleged herein, Ivan Goldsmith, M.D. (Goldsmith), had both a Controlled Substance Registration, Certificate No. CS20816, and a Practitioner Dispensing Registration, Certificate No. PD00413, issued by the Board.

FACTUAL ALLEGATIONS**II.**

On December 9, 2013, the Board granted Goldsmith an account for Internet access to the Nevada Prescription Monitoring Program (PMP) for purposes authorized under federal and state law.

III.

Before receiving access, Goldsmith signed a Practitioner Certification Statement on December 6, 2013, stating that he understood and agreed under penalty of perjury that he was responsible for all patient information transmitted from his account, that he would treat PMP information as confidential, that he would protect any PMP information in his possession or control in accordance with federal and state laws governing health care information, and that he

would safeguard his password and not share his login credentials with any other person.

IV.

Stephen Paddock (Paddock) was the perpetrator of the October 1, 2017, Las Vegas mass shooting, and committed suicide immediately after the incident sometime before midnight.

V.

On or about October 2, 2017, Goldsmith verified through his office electronic medical records system (EMR) that Paddock was never his patient.

VI.

From October 2, 2017 at 9:25 a.m. to October 3, 2017 at 2:20 p.m., Goldsmith's PMP account was used to query the PMP database five separate times using different search parameters for each query, to access Paddock's confidential patient information, and to obtain patient utilization reports detailing Paddock's prescription-controlled substance utilization history.

VII.

The fourth search, conducted on October 3, 2017 at 10:18 a.m., yielded specific prescription information regarding two prescriptions for Paddock filled at Evergreens Drugs in Henderson, Nevada in 2016, and at a Walgreens pharmacy in Reno, Nevada in 2017.

VIII.

On October 3, 2017 at 9:00 p.m., the Las Vegas Review-Journal published an article written by reporter Paul Harasim. That article purported to include Paddock's confidential patient information, including information about the two prescriptions, which the reporter attributed to and obtained from the Nevada Prescription Monitoring Program (PMP).

IX.

The Las Vegas Review-Journal updated the article on October 4, 2017 at 10:00 a.m. to reference specific prescription data and prescriber information related to Paddock from June 7, 2016 and June 21, 2017.

X.

On or about November 8, 2017, Goldsmith, through his counsel, filed an Amended Declaration with the Eighth Judicial District Court of Clark County Nevada in Case No. A-17-762877-W in which Goldsmith admits to directing his office staff to use his PMP account to query Paddock's confidential patient information and to obtain patient utilization reports on October 2, 2017, and again on October 3, 2017.

XI.

In his Amended Declaration Goldsmith also admits to routinely allowing his staff to use his PMP account to query the PMP on his behalf.

APPLICABLE LAW

XII.

The Board administers the Prescription Monitoring Program (PMP), which maintains a database of all transactions for schedule II, III, IV and V controlled substances prescribed and dispensed in Nevada. *See* NRS 453.162 through 453.165, *inclusive*.

XIII.

At the time of the events alleged herein, NRS 639.23507(1) authorized a practitioner to obtain a patient utilization report from the PMP before prescribing a controlled substance to his patients under certain circumstances, to assess whether the prescription is medically necessary.¹

XIV.

Patient utilization reports and data in the PMP database constitute Protected Health Information (PHI) as defined in 45 C.F.R. § 160.103. They are protected from unauthorized access, use and disclosure under the Health Insurance Portability and Accountability Act of 1996 (HIPAA). 45 C.F.R. Part 160 and Part 164, Subparts A and E (HIPPA Privacy Rule).

¹ Assembly Bill (AB) 474, 79th Legislative Session (2017), amended NRS 639.23507(1). Those amendments became effective January 1, 2018 and are therefore immaterial to this action.

XV.

Patient utilization reports and all data in the PMP database are also confidential and protected from unauthorized use or disclosure under state law. NRS 453.164(7).

XVI.

Unauthorized access, use or disclosure of PHI carries civil and criminal penalties under federal law. Pub.L. 104-191, 42 U.S.C. § 1320d-5 and 6.

XVII.

Unauthorized access, use or disclosure of information in the PMP database also constitutes a crime under state law. NRS 453.552(2).

FIRST CAUSE OF ACTION

XVIII.

By accessing or directing his staff to access Paddock's confidential data in the PMP database when Paddock was deceased and never his patient and by obtaining Paddock's patient utilization report, Goldsmith performed his duties as the holder of a Nevada Controlled Substance Registration in an incompetent, unskillful or negligent manner and engaged in unprofessional conduct or conduct contrary to the public interest pursuant to NAC 639.945(1)(i). Goldsmith's Controlled Substance Registration, Certificate of Registration No. CS20816, and Practitioner Dispensing Registration, Certificate No. PD00413, are therefore subject to discipline pursuant to NRS 639.210(4) and NRS 639.255.

SECOND CAUSE OF ACTION

XIX.

By accessing or directing his staff to access Paddock's confidential data in the PMP database when Paddock was deceased and never his patient and by obtaining Paddock's patient utilization report, Goldsmith violated the HIPAA Privacy Rule. His Controlled Substance Registration, Certificate of Registration No. CS20816, and Practitioner Dispensing Registration,

Certificate No. PD00413, are therefore subject to discipline pursuant to NRS 639.210(11) and NRS 639.255.

THIRD CAUSE OF ACTION

XX.

By accessing or directing his staff to access Paddock's confidential data in the PMP database when Paddock was deceased and never his patient and by obtaining Paddock's patient utilization report, Goldsmith violated, attempted to violate, assisted or abetted in the violation of or conspired to violate NRS 453.164(7) and/or the HIPAA Privacy Rule. His Controlled Substance Registration, Certificate of Registration No. CS20816, and Practitioner Dispensing Registration, Certificate No. PD00413, are therefore subject to discipline pursuant to NRS 639.210(12) and NRS 639.255.

FOURTH CAUSE OF ACTION

XXI.

By disclosing or allowing to be disclosed to the press—Las Vegas Review Journal and/or writer Paul Harasim—Paddock's confidential PMP data and patient utilization report, which were accessed only by Goldsmith's PMP account on October 2 and October 3, 2017, Goldsmith violated state and federal law, including the HIPAAA Privacy Rule and NRS 639.164(7). His Controlled Substance Registration, Certificate of Registration No. CS20816, and Practitioner Dispensing Registration, Certificate No. PD00413, are therefore subject to discipline pursuant to NRS 639.210(4), (11) and (12) as well as NRS 639.255.

FIFTH CAUSE OF ACTION

XXII.

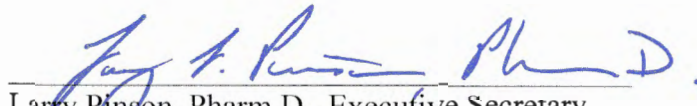
By accessing or directing his staff to access Paddock's confidential data in the PMP database when Paddock was deceased and never his patient and by obtaining Paddock's patient utilization report, Goldsmith committed an act that would render his Nevada Controlled Substance Registration inconsistent with the public interest pursuant to NRS 453.231, and is

subject to discipline pursuant to NRS 453.236(1)(d) and NRS 453.241(1).

XXIII.

WHEREFORE, it is requested that the Nevada State Board of Pharmacy take appropriate disciplinary action with respect to the Controlled Substance Registration, Certificate No. CS20816, and Practitioner Dispensing Registration, Certificate No. PD00413 of Respondent Goldsmith.

Signed this 1st day of May 2018.


Larry Pinson, Pharm.D., 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 regarding your certificate of registration. To do so, you must mail to the Board within twenty (20) days of your receipt of the Notice of Intended Action and Accusation a written statement showing your compliance.

BEFORE THE NEVADA STATE BOARD OF PHARMACY

NEVADA STATE BOARD OF PHARMACY,	)	CASE NO. 17-101-CS-S
)	
Petitioner,)	
v.	)	ANSWER AND NOTICE
	)	OF DEFENSE
IVAN GOLDSMITH, MD)	
Certificate of Registration No. CS20816, PD00413,)	
)	
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 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 May 2018.

IVAN GOLDSMITH, MD

FILED

APR 27 2018

NEVADA STATE BOARD
OF PHARMACY

BEFORE THE NEVADA STATE BOARD OF PHARMACY

NEVADA STATE BOARD OF PHARMACY,

Petitioner,

v.

DAVID J. ADAMS, D.O., Certificate of
Registration No. CS11506,

Respondent.

CASE NO. 17-095-CS-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 ("Pharmacy Board") has jurisdiction over this matter and this respondent because at the time of the events alleged herein, Respondent David J. Adams, D.O., held a Nevada Controlled Substance Registration, Certificate No. CS11506, issued by the Pharmacy Board.

FACTUAL ALLEGATIONS

II.

On April 10, 2018, the Nevada State Board of Osteopathic Medicine ("Osteopathic Board") approved and entered a Settlement Agreement and Order *In the Matter of: David J. Adams, D.O.*, Case No. AD1706001 (the "Order").

III.

The "Pertinent Facts" as set forth in the Order include:

- a. David Adams, D.O. is licensed by the Board to practice osteopathic medicine in Nevada (License No. 1074). Dr. Adams is board certified in anesthesiology. Order, ¶

- 1.

- b. In February 2017, the Board's office received information upon which the Board's staff initiated an investigation relating to Dr. Adams' practice of medicine. The information indicated that Dr. Adams was engaged in the general practice of medicine in addition to his practice as an anesthesiologist in various institutional settings, and the information indicated concerns with Dr. Adams' practices as a general practitioner. Order, ¶ 2.
- c. The Board's investigation determined that Dr. Adams associated professionally with Ronald Foote, M.D. for over 15 years. On May 30, 2014, Dr. Foote and the Nevada State Board of Medical Examiners (BME) entered into a stipulated indefinite suspension of Dr. Foote's license on May 30, 2014 that was followed in July 2014 with the commencement of a disciplinary action by the BME against Dr. Foote. The disciplinary action was resolved and the indefinite suspension was modified by a Settlement Agreement and Order Lifting Suspension entered by the BME and Dr. Foote on June 3, 2016. As a result of the disciplinary actions by the BME against Dr. Foote, since May 30, 2014, Dr. Foote did not have a DEA registration or a Nevada Controlled Substances Registration, meaning that Dr. Foote was prohibited from prescribing, administering, possessing, or distributing controlled substances to his patients. Order, ¶ 3.
- d. When Dr. Foote's license was restored with conditions in June 2016, Dr. Adams assisted Dr. Foote with Dr. Foote's general practice from Dr. Foote's office at Las Vegas Pain and Wellness Center, 6773 W. Charleston Boulevard in Las Vegas, Nevada. The practices developed and implemented by Dr. Foote and Dr. Adams were that Dr. Foote would see a patient at his office, and when Dr. Foote determined that a patient would need medications, Dr. Foote would prescribe any

dangerous drugs himself and Dr. Adams would prescribe any controlled substances for the patient. When Dr. Adams prescribed controlled substances for Dr. Foote's patients, he did so on a prescription blank containing his name on top, along with Dr. Foote's name, and the address of the Las Vegas Pain and Wellness Center, indicating that he was doing so as a physician employed at or working from Dr. Foote's practice at the Las Vegas Pain and Wellness Center. Order, ¶ 4.

- e. The focus of the Board's investigation was prescriptions Dr. Adams wrote for Dr. Foote's patients for promethazine HCL and codeine phosphate syrup, a controlled substance in Schedule V. Regarding these prescriptions, Dr. Adams did not see, touch, or examine any of Dr. Foote's patients who received these prescriptions. Instead, Dr. Foote provided Dr. Adams' prescriptions to Dr. Foote's patients by filling in the patients' names in prescription blanks from Las Vegas Pain and Wellness Center on which Dr. Adams had pre-signed and pre-filled out the drug information, leaving the patient name blank. Dr. Adams provided such prescription blanks to Dr. Foote for Dr. Foote to complete and provide to Dr. Foote's patients. Dr. Adams would ratify the promethazine HCL and codeine phosphate syrup prescriptions filled out and issued by Dr. Foote after reviewing Dr. Foote's chart notes for the patients and after the prescriptions had been issued. Dr. Adams made no medical notes of his own regarding any of the patients to whom his pre-signed prescriptions were issued by Dr. Foote. Order, ¶ 5.
- f. On November 30, 2017, Dr. Foote's office was searched pursuant to a warrant by officers and agents from the federal Drug Enforcement Agency (DEA) Tactical Diversion Squad. Based upon the evidence seized and admissions made by Dr. Foote, Dr. Foote was arrested and was booked into the Clark County Detention

Center. Order, ¶ 6.

- g. As part of the investigation of Dr. Foote's medical practice, Dr. Foote was interviewed at length on November 30, 2017. Dr. Adams was interviewed on December 13, 2017. The interviews and evidence obtained pursuant to the DEA's investigation showed that Dr. Foote's examinations of his patients were cursory and inadequate, that based upon these examinations he would render a diagnosis that was merely pretextual, and then based upon the pretextual diagnosis he would issue prescriptions to the patients for promethazine HCL and codeine phosphate syrup using the pre-signed prescription blanks provided to him by Dr. Adams. Dr. Foote would then collect cash from the patient. Order, ¶ 7.
- h. The interviews and evidence obtained pursuant to the DEA's investigation included admissions by Dr. Adams that he knew of Dr. Foote's practices, that he knowingly provided pre-signed blank prescriptions from Las Vegas Pain and Wellness Center for Dr. Foote to facilitate his practice. The pre-signed prescriptions blanks would be prepared by Dr. Adams for promethazine HCL and codeine phosphate syrup 473 ml., and that Dr. Adams acknowledged that he did not know or understand the quantity measurement for 473 ml. or whether it was large or small. Order, ¶ 8.
- i. On February 14, 2018, a criminal complaint was filed in the Las Vegas Justice Court against Dr. Adams (Case No. 18F02513X), charging Dr. Adams with four counts of conspiracy to violate the controlled substances act (NRS 453.401(1)(a)) and four counts of possession of signed prescription blanks (NRS 453.331(1)(a)). All eight counts are felonies. Dr. Adams' initial appearance regarding the criminal complaint is scheduled for March 14, 2018. Order, ¶ 9.
- j. Based upon the above facts, on February 27, 2018, the IBM and the Board's

Executive Director issued an Order of Summary Suspension which was subsequently served on Dr. Adams. Order, ¶ 10.

IV.

The Order also includes the following acknowledgment: “Dr. Adams admits that the facts contained in the "Pertinent Facts" section constitute violations of NRS 633.131(1)(k) and NRS 633.511(1)(a).” Order, pg. 5, ll. 4-7.

NRS 633.131 provides:

1. “Unprofessional conduct” includes:

* * * *

(k) Knowingly or willfully disobeying regulations of the State Board of Health, the State Board of Pharmacy or the State Board of Osteopathic Medicine.

NRS 633.511 provides:

1. The grounds for initiating disciplinary action pursuant to this chapter are:
 - (a) Unprofessional conduct.

APPLICABLE LAW

V.

A physician must be licensed to prescribe controlled substances. NRS 453.226; 21 CFR § 1306.03.

VI.

A physician may prescribe controlled substances only for a legitimate medical purpose and in the usual course of his professional practice. NRS 453.381(1); 21 CFR § 1306.04.

VII.

Each written prescription for a controlled substance must contain the handwritten signature of the prescribing practitioner. NRS 639.013(1)(a); NRS 639.2353(2); NAC 453.440(1)(c); 21 CFR § 1306.05.

VIII.

“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).

IX.

A licensee “[p]erforming any of his or her duties as the holder of a license, certificate or registration issued by the Board . . . in an incompetent, unskillful or negligent manner” constitutes “unprofessional conduct and conduct contrary to the public interest.” NAC 639.945(1)(i).

X.

“Aiding or abetting a person not licensed to practice pharmacy in the State of Nevada” constitutes “unprofessional conduct and conduct contrary to the public interest.” NAC 639.945(1)(j).

XI.

“Prescribing a drug as a prescribing practitioner to a patient with whom the prescribing practitioner does not have a bona fide therapeutic relationship” constitutes “unprofessional conduct and conduct contrary to the public interest.” NAC 639.945(1)(o).

XII.

The Board may suspend or revoke a registration issued pursuant to NRS 453.231 to prescribe or otherwise dispense a controlled substance upon a finding that the registrant has committed an act that would render registration inconsistent with the public interest. NRS 453.236(1)(d) and NRS 453.241(1).

XIII.

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).

XIV.

Violating any provision of the Federal Food, Drug and Cosmetic Act or any other federal law or regulation relating to prescription drugs is grounds for suspension or revocation of any license issued by the Board. NRS 639.210(11).

XV.

Violating, attempting to violate, assisting or abetting in the violation of or conspiring to violate any law or regulation relating to drugs, the manufacture or distribution of drugs or the practice of pharmacy is grounds for suspension or revocation of any license issued by the Board. NRS 639.210(12).

FIRST CAUSE OF ACTION

XVI.

By providing pre-signed prescription blanks to Dr. Foote, who is not licensed to prescribe controlled substances, and facilitating the issuance of prescriptions for promethazine HCL and codeine phosphate syrup 473 ml., a Schedule V controlled substance, to patients with whom he does not have a bona fide therapeutic relationship, Dr. Adams performed his duties as the holder of a Nevada Controlled Substance Registration in an incompetent, unskillful or negligent manner and engaged in unprofessional conduct and conduct contrary to the public interest pursuant to NAC 639.945(1)(i), and is subject to discipline pursuant to NRS 639.210(4) and NRS 639.255.

SECOND CAUSE OF ACTION

XVII.

By providing pre-signed prescription blanks to Dr. Foote, who is not licensed to prescribe controlled substances, and facilitating the issuance of prescriptions for a controlled substance to patients with whom he does not have a bona fide therapeutic relationship, Dr. Adams was a party to a fraudulent or deceitful practice or transaction and engaged in unprofessional conduct and conduct contrary to the public interest pursuant to NAC 639.945(1)(h), and is subject to discipline pursuant to NRS 639.210(4) and NRS 639.255.

THIRD CAUSE OF ACTION

XVIII.

By providing pre-signed prescription blanks to Dr. Foote, who is not licensed to prescribe controlled substances, and facilitating the issuance of prescriptions for a controlled substance to patients with whom he does not have a bona fide therapeutic relationship, Dr. Adams aided or abetted a person not licensed to practice pharmacy in the State of Nevada and engaged in unprofessional conduct and conduct contrary to the public interest pursuant to NAC 639.945(1)(j), and is subject to discipline pursuant to NRS 639.210(4) and NRS 639.255.

FOURTH CAUSE OF ACTION

XIX.

By prescribing a controlled substance for patients with whom he does not have a bona fide therapeutic relationship and outside the usual course of his professional practice as an anesthesiologist, Dr. Adams engaged in unprofessional conduct and conduct contrary to the public interest pursuant to NAC 639.945(1)(o), and is subject to discipline pursuant to NRS 639.210(4) and NRS 639.255.

FIFTH CAUSE OF ACTION

XX.

By prescribing a controlled substance for patients with whom he does not have a bona fide therapeutic relationship and outside the usual course of his professional practice as an anesthesiologist, Dr. Adams violated 21 CFR § 1306.04. By providing pre-signed prescription blanks to Dr. Foote, who is not licensed to prescribe controlled substances, and facilitating the issuance of prescriptions for a controlled substance, Dr. Adams violated 21 CFR § 1306.03 and CFR § 1306.05. He is therefore subject to discipline pursuant to NRS 639.210(11) and NRS 639.255.

SIXTH CAUSE OF ACTION

XXI.

By providing pre-signed prescription blanks to Dr. Foote, who is not licensed to prescribe controlled substances, and facilitating the issuance of prescriptions for a controlled substance to patients with whom he does not have a bona fide therapeutic relationship, Dr. Adams violated, attempted to violate, assisted or abetted in the violation of or conspired to violate NRS 453.331(1)(a), NRS 453.381(1), NRS 453.401(1)(a), NRS 639.013(1)(a), NRS 639.2353(2), NAC 453.440(1)(c), 21 CFR § 1306.03, 21 CFR § 1306.04 and/or 21 CFR § 1306.05, and is subject to discipline pursuant to NRS 639.210(12) and NRS 639.255.

SEVENTH CAUSE OF ACTION

XXII.

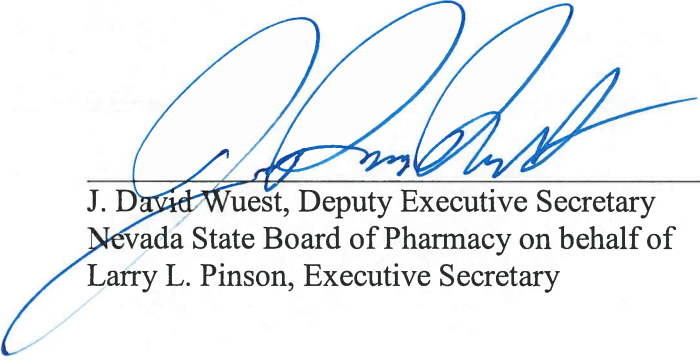
By providing pre-signed prescription blanks to Dr. Foote, who is not licensed to prescribe controlled substances, and facilitating the issuance of prescriptions for a controlled substance to patients with whom he does not have a bona fide therapeutic relationship, Dr. Adams committed an act that would render his Nevada Controlled Substance Registration

inconsistent with the public interest pursuant to NRS 453.231, and is subject to discipline pursuant to NRS 453.236(1)(d) and NRS 453.241(1).

XXIII.

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.

DATED this 27th day of April, 2018.



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

NOTICE TO RESPONDENT

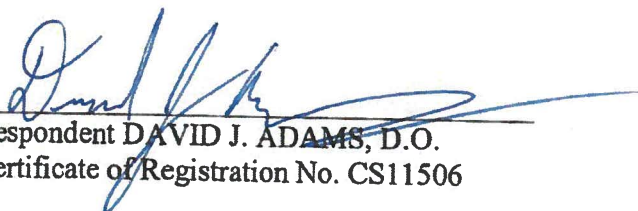
You have the right to show the Nevada State Board of Pharmacy that your conduct, as alleged above, complies with all lawful requirements regarding your certificate of registration. To do so, you must mail to the Board within twenty (20) days of your receipt of this Notice of Intended Action and Accusation a written statement showing your compliance.

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

See attached.

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 31 day of May, 2018.


Respondent DAVID J. ADAMS, D.O.
Certificate of Registration No. CS11506

ADAMS, David
Case no. 17-095-CS-S
May 31, 2018

As you have a copy of my settlement agreement with the Osteopathic Board, I will dispense with responding to each Cause of Action in the Notice of Intended Action and Accusation. Instead, I submit this answer to express my remorse with regards to both my actions and my failure to recognize that my prescribing arrangement with Dr. Foote could violate state or federal law. I had no intention to violate the law or circumvent this Board's authority. At the time, I truly believed that I was supporting the physician I had agreed to supervise, and that my oversight of my cough syrup prescriptions left in the care of a licensed physician was sufficient in terms of compliance and patient safety. I acknowledge how misguided my reasoning was, and I plead with the Board to allow me to retain my controlled substances registration so that I may practice solely as an anesthesiologist, under prescribing restrictions already in place with the Nevada State Board of Osteopathic Medicine.

I have made several mistakes over the last few years, and I intend to spend the rest of my career regaining the reputation I had prior to working with Dr. Foote. While I had no intention of violating the law, I realize I should not have trusted the judgment of a physician who could not prescribe. I should have personally consulted the Pharmacy Board and the Osteopathic Board regarding the acceptability of clinic operations. I was present in the clinic typically three times per day, and closely monitored patient treatment by reviewing records on a daily basis, but I fully understand and accept that those controls were no replacement for my personal care of those patients.

As an anesthesiologist, a suspension or revocation of my CS registration would devastate my practice and my livelihood. I cannot maintain my hospital privileges, or perform my duties, without a CS registration. As the Board is aware, as part of my settlement with the Osteopathic Board, I agreed not to write any prescriptions whatsoever, or my medical license will be suspended. I agreed to practice only within facilities licensed under NRS Chapter 449. The Osteopathic Board basically allowed me to continue practicing as an anesthesiologist, and in no other area of medicine. As a result, without my CS registration to continue my anesthesia practice, I would effectively not be able to practice medicine at all and will lose my livelihood entirely.

With regards to my criminal case, I have come to a verbal agreement with the District Attorney whereby the felony charges against me will be reduced to a single misdemeanor. I expect a written Cooperation Agreement to that effect to be executed prior to my appearance scheduled for July 18, 2018 and I will provide the Board with a copy.

I have been practicing anesthesia for 16 years in both California and Nevada. Prior to this instance, I had never been disciplined by any licensure board, and I have never had any malpractice complaints. By all accounts, I am known as a good anesthesiologist.

I am also known as a man of good character, with deep love of my country and respect for its laws. I went to medical school relatively late in life, after serving as a C-130 navigator in the Air Force. I was commended for my eight years of military service, including three overseas tours and eight combat missions. I had intended to return to serve as an Air Force physician, however a motorcycle accident caused by a drunk driver left me with severe injuries requiring seven surgeries and

ADAMS, David
Case no. 17-095-CS-S
May 31, 2018

intensive rehabilitation. It was that experience, however, that triggered my interest in anesthesiology.

Respectfully, I beg the Board to allow me to retain the privilege of having a CS registration so that I may continue to practice anesthesia. I have already agreed not to write any prescriptions and I will be cooperating with the District Attorney's office in providing testimony regarding the operations of the clinic in which I had worked. I have learned that I have no place in an outpatient clinic setting, and I have no intention of practicing, if I am permitted to do so, in any environment other than a surgical suite. I have no history of complaints or discipline with regard to anesthesia, and my continued practice of anesthesia would not pose any harm to public safety or threat to the public interest. I have many contacts in professional sports who are willing to help me design and implement a community education program to deter prescription drug abuse in the midst of the opioid crisis. Please do not allow one mistake, related to a Schedule V substance, define and destroy my entire career and livelihood.

FILED

JUN 15 2018

NEVADA STATE BOARD
OF PHARMACY

BEFORE THE NEVADA STATE BOARD OF PHARMACY

NEVADA STATE BOARD OF PHARMACY,	)	CASE NOS. 16-013-PD-S
)	
Petitioner,)	
v.	)	NOTICE OF INTENDED ACTION
	)	AND ACCUSATION
ROBERT TOLEDO, D.O.,)	
Certificate of Registration Nos. CS11019,)	
CS17832,)	
CS19754,)	
CS23073,)	
PD00063, and)	
PD11019,)	
)	
Respondent.	/	

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 NRS 233B.127(3) and as an accusation under NRS 639.241.

I.

The Nevada State Board of Pharmacy (Board) has jurisdiction over this matter because at the time of the events alleged herein, Respondent ROBERT ANTHONY TOLEDO, D.O. (Toledo) held active Controlled Substance Registrations, Certificate Nos. CS11019, CS17832, CS19754, and CS23073, issued by the Board. Toledo also held active Board-issued Practitioner Dispensing Registrations, Certificate Nos. PD00063 and PD11019.

FACTUAL ALLEGATIONS

II.

At the time of the events alleged herein, Toledo held an active license issued by the Nevada State Board of Osteopathic Medicine (D.O. Board) to practice osteopathic medicine in Nevada (License No. 1057), and owned and operated Henderson Wellness Medical Spa & Colonics (HWMS), located at 9895 Maryland Parkway, #C, Las Vegas, Nevada.

III.

On March 30, 2016, investigators from the Board and the D.O. Board (collectively the “Investigators”) conducted a joint investigation of HWMS.

IV.

When the Investigators arrived at HWMS, there was no one present there who was licensed to possess, access, order, prescribe or dispense dangerous drugs or controlled substances.

V.

Toledo arrived at HWMS approximately thirty (30) minutes after the Investigators arrived and initiated their investigation.

VI.

Prior to Toledo’s arrival on March 30, 2016, Toledo’s staff wrote and dispensed prescriptions for two (2) walk in patients without Toledo present at HWMS.

VII.

Toledo’s HWMS staff assisted each of the two (2) patients to complete a Medical Weight Loss Program – Progress Note, and, in Toledo’s absence, signed the Medical Weight Loss Program – Progress Notes with a stamp of Toledo’s signature.

VIII.

Without Toledo present, his HWMS staff created a prescription for each patient, prescription numbers 11211 for patient W.H., and 11212 for patient L.V., by stamping Phentermine 37.5 MG and instructions for use on a copied prescription blank bearing Toledo’s pre-signed signature.

IX.

Toledo’s staff accessed HWMS’s inventory of controlled substances and dangerous drugs and dispensed Phentermine 37.5 MG tablets to each patient without Toledo present and without Toledo or any licensed practitioner examining the patient to establish a bona fide therapeutic relationship between Toledo and the patient.

X.

Phentermine is a schedule IV-controlled substance.

XI.

Toledo established a system at HWMS wherein he directed his staff to routinely possess, prescribe and dispense controlled substances and dangerous drugs to patients on his behalf and in his absence without a bona fide relationship between Toledo and the patient.

XII.

HWMS had five (5) manila folders onsite that each contained copies of pre-signed prescription blanks which were pre-written for a dangerous drug and each bearing Toledo's copied signature. When a patient visited HWMS for a prescription, an unlicensed staff member wrote in the patient's name and information.

XIII.

The copies of pre-signed prescriptions in the five manila folders at HWMS included:

- Latisse – 14 pre-signed copied prescription blanks.
- Obagi CRS – 11 pre-signed copied prescription blanks.
- Obagi Nuderm – 21 pre-signed copied prescription blanks.
- Obagi Clenziderm – 13 pre-signed copied prescription blanks.
- Rx Sheets – 17 pre-signed copied prescription blanks for use when staff wrote for Phentermine and other prescription medications other than the Latisse and Obagi products.

XIV.

HWMS maintained a stock of controlled substances and dangerous drugs that were readily accessible to HWMS staff in Toledo's absence.

XV.

The acts performed by Toledo's HWMS staff constituted the practice of medicine since they involved assessment, diagnosis, and treatment of HWMS's patients.

XVI.

None of Toledo's HWMS staff were licensed to practice medicine as a physician, physician's assistant, or advanced practice registered nurse.

XVII.

Toledo did not examine any of the patients of HWMS in any capacity and did not maintain medical charts on any patients of HWMS.

XVIII.

Toledo's HWMS staff possessed the controlled substances and dangerous drugs they dispensed with Toledo's knowledge and consent and through the exercise of Toledo's authority to obtain and/or prescribe controlled substances and dangerous drugs.

XIX.

In August 2016, Toledo entered into a Settlement Agreement and Order with the Nevada State Board of Osteopathic Medicine, Case No. AD1606001, wherein he admitted to the factual allegations that form the basis for the causes of action set forth below.

APPLICABLE LAW

XX.

No person may possess a controlled substance or dangerous drug in Nevada except as authorized by law. NRS 453.336; NRS 453.338; NRS 453.373; NRS 454.213; NRS 454.316; NRS 454.321.

XXI.

No person may prescribe and dispense controlled substances in Nevada except as authorized by law. NRS 453.226; NRS 453.375(1); NRS 453.377; NRS 639.235(1); NAC 639.742(1), (3) and (4); 21 CFR § 1301.11; 21 CFR § 1306.03.

XXII.

A physician may prescribe and dispense controlled substances only for a legitimate medical purpose and in the usual course of his professional practice. NRS 453.381(1); 21 CFR § 1306.04.

XXIII.

Each written prescription for a controlled substance must contain the handwritten signature of the prescribing practitioner. NRS 639.013(1)(a); NRS 639.2353(2); NAC 453.440(1)(c); 21 CFR § 1306.05.

XXIV.

No person may prescribe and dispense dangerous drugs in Nevada except as authorized by law. NRS 454.213; NRS 454.215; NRS 639.235(1); NAC 639.742(1), (3) and (4).

XXV.

Each written prescription for a dangerous drug must contain the handwritten signature of the prescribing practitioner. NRS 639.013(1)(a); NRS 639.2353(2); NRS 454.223; NAC 454.060(1).

XXVI.

A dispensing practitioner must secure all controlled substances and dangerous drugs in his inventory in a locked storage area to which the dispensing practitioner has the only key or lock. NRS 453.375; NAC 453.400; NAC 453.410(1)(d); NAC 639.742(3)(c) and (4)(a); NAC 639.745(1)(c).

XXVII.

A dispensing practitioner shall ensure that no prescription for a controlled substance or dangerous drug is dispensed to a patient unless the dispensing practitioner is on-site at the facility. NAC 639.742(3)(e).

XXVIII.

“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).

XXIX.

A licensee “[p]erforming any of his or her duties as the holder of a license, certificate or registration issued by the Board . . . in an incompetent, unskillful or negligent manner” constitutes “unprofessional conduct and conduct contrary to the public interest.” NAC 639.945(1)(i).

XXX.

“Aiding or abetting a person not licensed to practice pharmacy in the State of Nevada” constitutes “unprofessional conduct and conduct contrary to the public interest.” NAC 639.945(1)(j).

XXXI.

“Prescribing a drug as a prescribing practitioner to a patient with whom the prescribing practitioner does not have a bona fide therapeutic relationship” constitutes “unprofessional conduct and conduct contrary to the public interest.” NAC 639.945(1)(o).

XXXII.

The Board may suspend or revoke a registration issued pursuant to NRS 453.231 to prescribe or otherwise dispense a controlled substance upon a finding that the registrant has committed an act that would render registration inconsistent with the public interest. NRS 453.236(1)(d) and NRS 453.241(1).

XXXIII.

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).

XXXIV.

Violating any provision of the Federal Food, Drug and Cosmetic Act or any other federal law or regulation relating to prescription drugs is grounds for suspension or revocation of any license issued by the Board. NRS 639.210(11).

XXXV.

Violating, attempting to violate, assisting or abetting in the violation of or conspiring to violate any law or regulation relating to drugs, the manufacture or distribution of drugs or the practice of pharmacy is grounds for suspension or revocation of any license issued by the Board. NRS 639.210(12).

FIRST CAUSE OF ACTION

(Aiding and Abetting the Unlawful Possession of Controlled Substances)

XXXVI.

By allowing his HWMS staff, none of whom were practitioners licensed to possess controlled substances, to use his authority to access and possess an inventory of controlled substances, Toledo aided and abetted his HWMS staff in the unlicensed practice of pharmacy in violation of NRS

453.338(1) and engaged in unprofessional conduct and conduct contrary to the public interest as defined in NAC 639.945(g), (h), (i), (j) and (k) and NRS 633.131(d). For that conduct, Toledo is subject to discipline pursuant to NRS 639.210(1), (4), (12) and (16), and NRS 639.255.

SECOND CAUSE OF ACTION

(Aiding and Abetting the Unlawful Possession of Dangerous Drugs)

XXXVII.

By allowing his HWMS staff, none of whom were practitioners licensed to possess dangerous drugs, to use his authority to obtain and possess an inventory of dangerous drugs, Toledo aided and abetted his HWMS staff in the unlicensed practice of pharmacy in violation of NRS 454.213; NRS 454.311 and NRS 454.316 and engaged in unprofessional conduct and conduct contrary to the public interest as defined in NAC 639.945(g), (h), (i), (j) and (k) and NRS 633.131(d). For that conduct, Toledo is subject to discipline pursuant to NRS 639.210(1), (4), (12) and (16), and NRS 639.255.

THIRD CAUSE OF ACTION

(Aiding and Abetting the Unlawful Prescribing of Controlled Substances)

XXXVIII.

By allowing his HWMS staff, none of whom were practitioners licensed to prescribe controlled substances, to issue prescriptions for controlled substances using pre-signed and copied prescription blanks or a stamp of Toledo's signature to patients with whom Toledo had no bona fide therapeutic relationship, Toledo violated and/or aided and abetted his HWMS staff in violating 21 CFR § 1306.03; 21 CFR § 1306.04; 21 CFR § 1306.05; NRS 453.321(1)(a); NRS 453.331(1)(b), (c), (d), (f) and (h), NRS 453.381(1); NRS 639.2813(1) and NAC 453.440(1)(c). Toledo has therefore engaged in unprofessional conduct and conduct contrary to the public interest as defined in NAC 639.945(g), (h), (i), (k), (n) and (o) and NRS 633.131(d). For that conduct, Toledo is subject to discipline pursuant to NRS 639.210(1), (4), (11), (12) and (16), and NRS 639.255.

FOURTH CAUSE OF ACTION
(Aiding and Abetting the Unlawful Prescribing of Dangerous Drugs)

XXXIX.

By allowing his HWMS staff, none of whom were practitioners licensed to prescribe dangerous drugs, to issue prescriptions for dangerous drugs using pre-signed and copied prescription blanks or a stamp of Toledo's signature to patients with whom Toledo had no bona fide therapeutic relationship, Toledo violated and/or aided and abetted HWMS's staff in violating NRS 454.221(1), NRS 454.223, NRS 454.311(1) and (2), NRS 454.316; NRS 639.2813(1); NAC 454.060(1) and NRS 639.235(1). Toledo has therefore engaged in unprofessional conduct and conduct contrary to the public interest as defined in NAC 639.945(g), (h), (i), (k), (n) and (o) and NRS 633.131(1)(d). For that conduct, Toledo is subject to discipline pursuant to NRS 639.210(1), (4), (12) and (16), and NRS 639.255.

FIFTH CAUSE OF ACTION
(Aiding and Abetting the Unlawful Dispensing of Prescription Drugs)

XL.

By allowing his HWMS staff, none of whom were practitioners licensed to prescribe dangerous drugs, to dispense controlled substances and/or dangerous drugs using pre-signed and copied prescription blanks or a stamped signature to patients with whom Toledo had no bona fide therapeutic relationship, Toledo violated and/or aided and abetted his HWMS staff in violating 21 CFR § 1306.03; 21 CFR § 1306.04; 21 CFR § 1306.05; NRS 639.235(1); NRS 639.284(2) and NRS 639.285. Toledo has therefore engaged in unprofessional conduct and conduct contrary to the public interest as defined in NRS 639.945(g), (h), (i), (j), (k), (n) and (o). For that conduct, Toledo is subject to discipline pursuant to NRS 639.210(1), (4), (11), (12) and (16), NRS 639.255 and NAC 639.7445.

SIXTH CAUSE OF ACTION
(Aiding and Abetting the Unlawful Dispensing of Controlled Substances)

XLI.

By allowing his HWMS staff, none of whom were practitioners licensed to prescribe controlled substances, to possess and dispense controlled substances to patients with whom he had no

bona fide therapeutic relationship, Toledo aided and abetted HWMS's staff in violating 21 CFR § 1301.11; NRS 639.100(1); NRS 453.316(1); and NRS 453.331(1)(b), (c), (d), (f) and (h). Toledo has therefore engaged in unprofessional conduct and conduct contrary to the public interest as defined in NRS 639.945(g), (h), (i), (j), (k), (n) and (o). For that conduct, Toledo is subject to discipline pursuant to NRS 639.210(1), (4), (11), (12) and (16), NRS 639.255 and NAC 639.7445.

SEVENTH CAUSE OF ACTION

(Aiding and Abetting the Unlawful Dispensing of Dangerous Drugs)

XLII.

By allowing his HWMS staff, none of whom were practitioners licensed to prescribe dangerous drugs, to possess and dispense dangerous drugs to patients with whom he had no bona fide therapeutic relationship, Toledo aided and abetted HWMS's staff in violating NRS 639.100(1); NRS 454.215 and NRS 454.321. Toledo has therefore engaged in unprofessional conduct and conduct contrary to the public interest as defined in NRS 639.945(g), (h), (i), (j), (k), (n) and (o). For that conduct, Toledo is subject to discipline pursuant to NRS 639.210(1), (4), (12) and (16), NRS 639.255 and NAC 639.7445.

EIGHTH CAUSE OF ACTION

(Fraudulent or Deceitful Practices and Transactions)

XLIII.

By allowing his HWMS staff, none of whom were practitioners licensed to possess, prescribe and dispense controlled substances or dangerous drugs, to possess, prescribe and dispense controlled substances and dangerous drugs under his authority, Toledo performed and/or was a party to fraudulent and deceitful practices and transactions and engaged in unprofessional conduct and conduct contrary to the public interest pursuant to NAC 639.945(1)(h), and is subject to discipline pursuant to NRS 639.210(4) and NRS 639.255.

NINTH CAUSE OF ACTION
(Dispensing Controlled Substances Without A Practitioner's Signature)

XLIV.

By dispensing, and/or by allowing his HWMS staff to dispense, controlled substances to patients without Toledo's valid handwritten signature on each written prescription, Toledo acted in violation of 21 CFR § 1306.05; NRS 639.2353(2); NAC 453.440(1)(c); and NAC 453.410(1)(b)(8), and is subject to discipline pursuant to NRS 639.210(1), (4), (11), (12) and (16), NRS 639.255 and NAC 639.7445.

TENTH CAUSE OF ACTION
(Dispensing Dangerous Drugs Without A Practitioner's Signature)

XLV.

By dispensing, and/or by allowing his HWMS staff to dispense, dangerous drugs to patients without Toledo's valid handwritten signature on each written prescription, Toledo acted in violation of NRS 454.223(2)(a); NRS 639.2353(2); and NAC 454.060(1), and is subject to discipline pursuant to NRS 639.210(1), (4), (12) and (16), NRS 639.255 and NAC 639.7445.

ELEVENTH CAUSE OF ACTION
(Failure to Adequately Secure Drugs)

XLVI.

By allowing his HWMS staff access to his inventory of controlled substances and dangerous drugs when he was not on site at his facility, Toledo violated NRS 453.375; NAC 453.400; NAC 453.410(1)(d); NAC 639.742(3)(c) and (4)(a), and NAC 639.745(1)(c), and is subject to discipline under NRS 639.210(11) and (12), NRS 639.255 and NAC 639.7445.

TWELFTH CAUSE OF ACTION
(Dispensing When Practitioner Off-Site)

XLVII.

By allowing his HWMS staff to dispense controlled substances and dangerous drugs to patients when he was not on-site at his facility, Toledo violated and/or aided and abetted his HWMS

staff in violating 21 CFR § 1301.11 and NAC 639.742(3)(e), and is subject to discipline pursuant to NRS 639.210(11) and (12), NRS 639.255 and NAC 639.7445.

THIRTEENTH CAUSE OF ACTION
(Dispensing Without Dispensing Practitioner Verification)

XLVIII.

By allowing his HWMS staff to dispense prescriptions for controlled substances and dangerous drugs without Toledo first personally checking the medications and initialing them before they were dispensed, Toledo violated 21 CFR § 1306.05 and NAC 639.743(2)(a) and/or (b). Toledo is therefore subject to discipline pursuant to NRS 639.210(11) and (12), NRS 639.255 and NAC 639.7445.

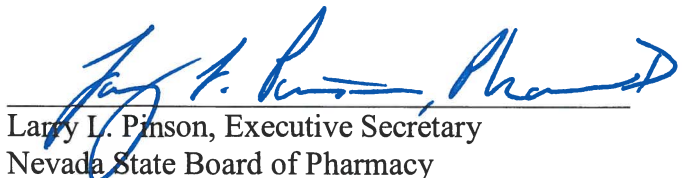
FOURTEENTH CAUSE OF ACTION
(Conduct Inconsistent with Public Interest)

XLIX.

By providing pre-signed prescription blanks and/or a stamp of his signature to his HWMS staff, none of whom were practitioners licensed to prescribe controlled substances, and by facilitating the issuance of prescriptions for controlled substances to patients with whom Toledo does not have a bona fide therapeutic relationship, Toledo committed an act that would render his Nevada Controlled Substance Registration inconsistent with the public interest pursuant to NRS 453.231 and is subject to discipline pursuant to NRS 453.236(1)(d) and NRS 453.241(1).

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.

Signed this ¹²15 day of June 2018.



 Larry L. Pinson, 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 regarding your certificate of registration. To do so, you must mail to the Board within 20 (twenty) days of your receipt of this Notice of Intended Action and Accusation a written statement showing your compliance.

FILED**JUL 03 2018****NEVADA STATE BOARD
OF PHARMACY**

1 **ANS**
 2 **JOHN H. COTTON, ESQ.**
 3 Nevada Bar No. 5268
 4 E-mail: JHCotton@JHCottonlaw.com
 5 **KATHERINE L. TURPEN, ESQ.**
 6 Nevada Bar No. 8911
 7 E-mail: KTurpen@JHCottonlaw.com
 8 **JOHN H. COTTON & ASSOCIATES**
 9 7900 West Sahara Avenue, Suite 200
 10 Las Vegas, Nevada 89117
 11 Telephone: 702/832-5909
 12 Facsimile: 702/832-5910

13 *Attorneys for Robert Toledo, D.O., Respondent*

14 **BEFORE THE NEVADA STATE**

15 * * *

16 **BOARD OF PHARMACY**

17 **Nevada State Board of Pharmacy,**

Case No.: 16-013-PD-S

18 **Petitioner,**

19 **v.**

**ANSWER TO NOTICE OF INTENDED
ACTION AND ACCUSATION**

20 **Robert Toledo, D.O.,**
 21 **Certificate of Registration Nos. CS1109,**
 22 **CS17832,**
 23 **CS19754,**
 24 **CS23073,**
 25 **PD00063, and**
 26 **PD11019**

27 **Respondent.**

28 Comes now Respondent, ROBERT TOLEDO, D.O. ("Respondent"), by and through his attorneys of record, the law firm of JOHN H. COTTON & ASSOCIATES, and answers the Notice of Intended Action and Accusations filed by the Nevada State Board of Pharmacy as follows:

...

...

I.

Respondent admits the allegations contained in Paragraph I of the Notice of Intended Action and Accusation.

FACTUAL ALLEGATIONS**II.**

Respondent admits the allegations contained in Paragraph II of the Notice of Intended Action and Accusation.

III.

Respondent admits the allegations contained in Paragraph III of the Notice of Intended Action and Accusation.

IV.

Respondent generally denies each and every allegation of malpractice and each and every statutory violation that is set forth in the Notice of Intended Action and Accusation.

V.

Respondent generally denies each and every allegation of malpractice and each and every statutory violation that is set forth in the Notice of Intended Action and Accusation.

VI.

Respondent generally denies each and every allegation of malpractice and each and every statutory violation that is set forth in the Notice of Intended Action and Accusation.

VII.

Respondent generally denies each and every allegation of malpractice and each and every statutory violation that is set forth in the Notice of Intended Action and Accusation.

VIII.

Respondent generally denies each and every allegation of malpractice and each and every statutory violation that is set forth in the Notice of Intended Action and Accusation.

IX.

Respondent generally denies each and every allegation of malpractice and each and every

1 statutory violation that is set forth in the Notice of Intended Action and Accusation.

2 **X.**

3 The statements herein speak for themselves. No further response is indicated.

4 **XI.**

5 Respondent generally denies each and every allegation of malpractice and each and every
6 statutory violation that is set forth in the Notice of Intended Action and Accusation.

7 **XII.**

8 Respondent generally denies each and every allegation of malpractice and each and every
9 statutory violation that is set forth in the Notice of Intended Action and Accusation.

10 **XIII.**

11 Respondent generally denies each and every allegation of malpractice and each and every
12 statutory violation that is set forth in the Notice of Intended Action and Accusation.

13 **XIV.**

14 Respondent generally denies each and every allegation of malpractice and each and every
15 statutory violation that is set forth in the Notice of Intended Action and Accusation.

16 **XV.**

17 Respondent generally denies each and every allegation of malpractice and each and every
18 statutory violation that is set forth in the Notice of Intended Action and Accusation.

19 **XVI.**

20 Respondent generally denies each and every allegation of malpractice and each and every
21 statutory violation that is set forth in the Notice of Intended Action and Accusation.

22 **XVII.**

23 Respondent generally denies each and every allegation of malpractice and each and every
24 statutory violation that is set forth in the Notice of Intended Action and Accusation.

25 **XIX.**

26 Respondent admits that in August 2016, he entered into a Settlement Agreement and
27 Order with the Nevada State Board of Osteopathic Medicine, Case No. AD1606001.
28 Defendant denies that, when entering into the Settlement Agreement, that he admitted to

1 the factual allegations that thereby form the basis for the causes of the action set forth in
2 the Notice of Intended Action and Accusation.

3 **APPLICABLE LAW**

4 **XX.**

5 The cited Nevada Revised Statutes speak for themselves. No further response is
6 indicated.

7 **XXI.**

8 The cited Nevada Revised Statutes speak for themselves. No further response is
9 indicated.

10 **XXII.**

11 The cited Nevada Revised Statutes and Code of Federal Regulations speak for
12 themselves. No further response is indicated

13 **XXIII.**

14 The cited Nevada Revised Statutes and Code of Federal Regulations speak for
15 themselves. No further response is indicated

16 **XXIV.**

17 The cited Nevada Revised Statutes and Nevada Administrative Codes speak for
18 themselves. No further response is indicated.

19 **XXV.**

20 The cited Nevada Revised Statutes and Nevada Administrative Codes speak for
21 themselves. No further response is indicated.

22 **XXVI.**

23 The cited Nevada Revised Statutes and Nevada Administrative Codes speak for
24 themselves. No further response is indicated.

25 **XXVII.**

26 The cited Nevada Administrative Codes speak for themselves. No further response is
27 indicated.

XXVIII.

The cited Nevada Administrative Codes speak for themselves. No further response is indicated.

XXIX.

The cited Nevada Administrative Codes speak for themselves. No further response is indicated.

XXX.

The cited Nevada Administrative Codes speak for themselves. No further response is indicated.

XXXI.

The cited Nevada Administrative Codes speak for themselves. No further response is indicated.

XXXII.

The cited Nevada Revised Statutes speak for themselves. No further response is indicated.

XXXIII.

The cited Nevada Revised Statutes speak for themselves. No further response is indicated.

XXXIV.

The cited Nevada Revised Statutes speak for themselves. No further response is indicated.

XXXV.

The cited Nevada Revised Statutes speak for themselves. No further response is indicated.

...

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...

...

FIRST CAUSE OF ACTION

(Aiding and Abetting the Unlawful Possession of Controlled Substances)

XXXVI.

Respondent generally denies each and every allegation of malpractice and each and every statutory violation that is set forth in the Notice of Intended Action and Accusation.

SECOND CAUSE OF ACTION

(Aiding and Abetting the Unlawful Possession of Dangerous Drugs)

XXXVII.

Respondent generally denies each and every allegation of malpractice and each and every statutory violation that is set forth in the Notice of Intended Action and Accusation.

THIRD CAUSE OF ACTION

(Aiding and Abetting the Unlawful Prescribing of Controlled Substances)

XXXVIII.

Respondent generally denies each and every allegation of malpractice and each and every statutory violation that is set forth in the Notice of Intended Action and Accusation.

FOURTH CAUSE OF ACTION

(Aiding and Abetting the Unlawful Prescribing of Dangerous Drugs)

XXXIX.

Respondent generally denies each and every allegation of malpractice and each and every statutory violation that is set forth in the Notice of Intended Action and Accusation.

FIFTH CAUSE OF ACTION

(Aiding and Abetting the Unlawful Dispensing of Prescription Drugs)

XL.

Respondent generally denies each and every allegation of malpractice and each and every statutory violation that is set forth in the Notice of Intended Action and Accusation.

...

...

...

SIXTH CAUSE OF ACTION

(Aiding and Abetting the Unlawful Dispensing of Controlled Substances)

XLI.

Respondent generally denies each and every allegation of malpractice and each and every statutory violation that is set forth in the Notice of Intended Action and Accusation.

SEVENTH CAUSE OF ACTION

(Aiding and Abetting the Unlawful Dispensing of Dangerous Drugs)

XLII.

Respondent generally denies each and every allegation of malpractice and each and every statutory violation that is set forth in the Notice of Intended Action and Accusation.

EIGHTH CAUSE OF ACTION

(Fraudulent or Deceitful Practices and Transactions)

XLIII.

Respondent generally denies each and every allegation of malpractice and each and every statutory violation that is set forth in the Notice of Intended Action and Accusation.

NINTH CAUSE OF ACTION

(Dispensing Controlled Substances Without A Practitioner's Signature)

XLIV.

Respondent generally denies each and every allegation of malpractice and each and every statutory violation that is set forth in the Notice of Intended Action and Accusation.

TENTH CAUSE OF ACTION

(Dispensing Dangerous Drugs Without a Practitioner's Signature)

XLV.

Respondent generally denies each and every allegation of malpractice and each and every statutory violation that is set forth in the Notice of Intended Action and Accusation.

...

...

...

ELEVENTH CAUSE OF ACTION

(Failure to Adequately Secure Drugs)

XLVI.

Respondent generally denies each and every allegation of malpractice and each and every statutory violation that is set forth in the Notice of Intended Action and Accusation.

TWELFTH CAUSE OF ACTION

(Dispensing When Practitioner Off-Site)

XLVII.

Respondent generally denies each and every allegation of malpractice and each and every statutory violation that is set forth in the Notice of Intended Action and Accusation.

THIRTEENTH CAUSE OF ACTION

(Dispensing Without Dispensing Practitioner Verification)

XLVIII.

Respondent generally denies each and every allegation of malpractice and each and every statutory violation that is set forth in the Notice of Intended Action and Accusation.

FOURTEENTH CAUSE OF ACTION

(Conduct Inconsistent with Public Interest)

XLIX.

Respondent generally denies each and every allegation of malpractice and each and every statutory violation that is set forth in the Notice of Intended Action and Accusation.

AFFIRMATIVE DEFENSES

Having Answered the Board's Notice of Intended Action and Accusation, Respondent avails himself to all available Affirmative Defenses, including but not limited to

The Notice of Intended Action and Accusation is legally insufficient.

The Notice of Intended Action and Accusation should be barred by the Doctrine of Laches and Prejudicial Delay in bringing the Accusation against Respondent.

...

1 The Notice of Intended Action and Accusation is barred by the applicable statute of
2 limitations.

3 The Notice of Intended Action and Accusation and related proceedings deny and impinge
4 upon the procedural and substantive due process rights of the Respondent.

5 The Notice of Intended Action and Accusation and related proceedings violate the
6 Respondent's Double Jeopardy rights, amounting to duplicative and successive prosecutions and
7 disciplines by the same sovereign, namely, the State of Nevada, based on the same alleged
8 actions and offense.

9 Respondent reserves the right to amend this Answer to allege additional affirmative
10 defenses if subsequent investigation warrants.

11 **WHEREFORE**, Respondent prays:

12 1. That the Board find that the Notice of Intended Action and Accusation and any
13 facts obtained during discovery do not support issuance of any discipline against Respondent;

14 2. That the Board find that Respondent did not violate any provisions of the NRS,
15 NAC or CFR; and

16 3. That this matter be stayed and then dismissed, pending ongoing compliance with
17 and completion of the Stipulated Settlement Agreement entered into between the Respondent and
18 the State of Nevada, Board of Osteopathic Medicine, arising out of the same set of alleged facts
19 asserted by the State of Nevada, Board of Pharmacy, Notice of Intended Action and Accusation.

20 4. That the Board provide further relief as the Board deems just and proper.

21 **DATED** this 2d day of July 2018.

22 **JOHN H. COTTON & ASSOCIATES**

23 */s/ Katherine L. Turpen*

24
25
26 JOHN H. COTTON, ESQ.
27 Nevada Bar No. 005268
28 KATHERINE L. TURPEN, ESQ.
Nevada Bar No. 008911
Attorneys for Respondent

FILED

FEB 27 2018

BEFORE THE NEVADA STATE BOARD OF PHARMACY

NEVADA STATE BOARD
OF PHARMACY

NEVADA STATE BOARD OF PHARMACY,	)	CASE NOS. 17-066-CS-S
	)	17-066-TD-A-S
Petitioner,	)	17-066-TD-B-S
v.)	
)	
CRAIG WEINGROW, M.D.,	)	NOTICE OF INTENDED ACTION
Certificate of Registration Nos. CS20272	)	AND ACCUSATION
PD00502,)	
)	
TERESA JAFFER, T.D.,)	
Certificate of Registration No. TD01408,)	
)	
and)	
)	
MARECXY RUBIO-VERONICA, T.D.,)	
Certificate of Registration No. TD01461,)	
)	
Respondents.	/	

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.

I.

The Nevada State Board of Pharmacy (Board) has jurisdiction over this matter because at the time of the events alleged herein, Respondent Craig Weingrow, MD (Weingrow) had both a Controlled Substance Registration, Certificate No. CS20272 and a Practitioner Dispensing Registration, Certificate No. PD00502, with the Board. Respondents Teresa Jaffer (Jaffer), Certificate of Registration No. TD01408, and Marecxy Rubio-Veronica (Rubio-Veronica), Certificate of Registration No. TD01461, each held Technician Dispensing Registrations with the Board.

FACTUAL ALLEGATIONS

II.

On November 1, 2017, investigators from the Board, the Nevada State Board of Medical Examiners (BME) and the Drug Enforcement Administration (DEA) conducted a joint investigation at Respondent Weingrow's medical office.

III.

The investigators found evidence of misconduct and violations involving prescription records and the unlawful dispensing of controlled substances at Wiengrow's medical office. The misconduct and the violations the investigators observed and documented at Weingrow's medical office include:

1. Investigators obtained a sample of five hundred and eighty (580) prescriptions for controlled substances and dangerous drugs that Wiengrow's medical office dispensed to patients between October 14, 2017 and October 31, 2017. Of those 580 prescriptions, not one was signed by Weingrow personally.
2. Weingrow knowingly permitted Respondents Jaffer, Rubio-Veronica and three unlicensed office staff members, namely, two receptionists and one medical assistant/receptionist (collectively "Office Staff"), to falsify his signature or initials on his prescriptions.
3. Weingrow typically signs his full name when he signs prescriptions and other documents personally.
4. Weingrow trained and/or permitted Jaffer, Rubio-Veronica and Office Staff to write a "C" followed by a wavy line to falsify his signature to his prescriptions.
5. Jaffer, Rubio-Veronica, and Office Staff falsely documented patient initials and dates of service on patient's informed consent labels.
6. Weingrow allowed Jaffer, Rubio-Veronica and Office Staff access to his inventory of controlled substances and dangerous drugs to dispense to his patients when he was not present in the office.

7. Weingrow, Jaffer, Ruboio-Veronica and Office Staff mailed controlled substances to patients who lived out-of-town.

8. Weingrow allowed Jaffer to transport controlled substances to a United States Post Office for mailing.

9. Weingrow, Jaffer, Rubio-Veronica and Office Staff also used Federal Express to ship medications to patients.

10. As examples of Weingrow's unlawful activities, the investigators found evidence that Weingrow vacationed outside of the country in October 2016, and again in July 2017. The following is a summary of the controlled substances Jaffer, Rubio-Veronica and Office Staff wrote for and/or dispensed to Weingrow's patients during those periods while Weingrow was absent.

October 18, 2016 to October 28, 2016

Weingrow's medical office:

- Issued 18 prescriptions with Weingrow's signature on them to 14 patients.
- Dispensed 6 medications at Weingrow's office.
- Dispensed 4 medications to patients by mail.

July 1, 2017 to July 9, 2017

Weingrow's medical office:

- Issued 4 prescriptions with Weingrow's signature on them to 3 patients.
- Dispensed 1 medication at Weingrow's office.

11. The "Medical Weight Loss" shipping log at Wiengrow's medical office for the time period between August 26, 2016, through October 31, 2017, indicates that his staff shipped approximately 166 shipments containing controlled substances to Weingrow's patients.

IV.

Weingrow and Jaffer each signed a statement admitting that Jaffer, Rubio-Veronica and Office Staff:

- Signed Weingrow's name on prescriptions for controlled substances and dangerous drugs;
- Falsely documented patient initials on informed consent forms;
- Dispensed controlled substances to patients by U.S. Mail and Federal Express; and
- Dispensed medications for controlled substances and dangerous drugs without Weingrow's signature on the prescriptions.

APPLICABLE LAW

V.

Each written prescription for a controlled substance and each written prescription for a dangerous drug must contain the handwritten signature of the prescribing practitioner. *See* Nevada Revised Statutes (NRS) 453.128(1)(a), NRS 454.00961(1)(a), NRS 454.223(2)(a), NRS 639.013(1)(a) and NRS 639.2353(2); *see also* Nevada Administrative Code (NAC) 453.440(1)(c), NAC 453.410(1)(b)(8) and NAC 454.060(1).

VI.

"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)(h).

VII.

A licensee "[p]erforming any of his or her duties as the holder of a license, certificate or registration issued by the Board, or as the owner of a business or an entity licensed by the Board, in an incompetent, unskillful or negligent manner" constitutes "unprofessional conduct and conduct contrary to the public interest." NAC 639.945(1)(i).

VIII.

A person must be a *licensed practitioner* in order to lawfully write a prescription. See NRS 453.226, NRS 453.231, and NRS 639.100.

IX.

“Performing any act, task or operation for which licensure, certification or registration is required without the required license, certificate or registration” constitutes “unprofessional conduct and conduct contrary to the public interest.” NAC 639.945(k).

X.

NAC 639.742 states in relevant part:

1. A practitioner who wishes to dispense controlled substances or dangerous drugs must apply to the Board on an application provided by the Board for a certificate of registration to dispense controlled substances or dangerous drugs.

....

3. Except as otherwise provided in NRS 639.23277 and NAC 639.395, the dispensing practitioner and, if applicable, the owner or owners of the facility, shall ensure that:

- (a) All drugs are ordered by the dispensing practitioner;
- (b) All drugs are received and accounted for by the dispensing practitioner;
- (c) All drugs are stored in a secure, locked room or cabinet to which the dispensing practitioner has the only key or lock combination;
- (d) All drugs are dispensed in accordance with NAC 639.745;
- (e) No prescription is dispensed to a patient unless the dispensing practitioner is on-site at the facility;
- (f) All drugs are dispensed only to the patient personally at the facility;

....

4. With regard to the filling and dispensing of a prescription at a facility, only the dispensing practitioner or a dispensing technician may:

- (a) Enter the room or cabinet in which drugs are stored;
- (b) Remove drugs from stock;
- (c) Count, pour or reconstitute drugs;
- (d) Place drugs into containers;
- (e) Produce and affix appropriate labels to containers that contain or will contain drugs;
- (f) Fill containers for later use in dispensing drugs; or
- (g) Package or repackage drugs.

XI.

NAC 639.743 states:

1. Except as otherwise provided in NRS 639.23277 and NAC 639.395, a person to whom a dispensing practitioner is providing training and experience pursuant to subsection 4 of NAC 639.7425 must not be allowed access to the room or cabinet in which drugs are stored unless accompanied by the dispensing practitioner. After the person has completed his or her training and experience and the Board has received an affidavit from the dispensing practitioner pursuant to subsection 5 of NAC 639.7425:

(a) The person may access the room or cabinet in which drugs are stored without being accompanied by the dispensing practitioner, so long as the dispensing practitioner is on-site at the facility; and

(b) The dispensing practitioner is not required to observe the work of the person.

2. A dispensing practitioner who allows a dispensing technician to perform any function described in subsection 4 or 5 of NAC 639.742 is responsible for the performance of that function by the dispensing technician. All such functions performed by a dispensing technician must be performed at the express direction and delegation of the dispensing practitioner. Each prescription with respect to which a dispensing technician performed such a function:

(a) Must be checked by the dispensing practitioner, and the dispensing practitioner shall indicate on the label of the prescription and in his or her record regarding the prescription that the dispensing practitioner has checked the work performed by the dispensing technician; and

(b) Must not be dispensed to the patient without the initials of the dispensing practitioner thereon. A prescription which has been so initialed must be handed to the patient only by the dispensing practitioner or an employee authorized by the dispensing practitioner.

XII.

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).

FIRST CAUSE OF ACTION

Dispensing Without A Practitioner's Signature
(Respondents Weingrow, Jaffer, and Rubio-Veronica)

XIII.

By dispensing, and/or by allowing to be dispensed, controlled substances and dangerous

drugs to patients without Weingrow's handwritten signature on each written prescription, Respondents Weingrow, Jaffer and Rubio-Veronica each acted in violation of NRS 454.223(2)(a), NRS 639.2353(2), NAC 453.440(1)(c), NAC 453.410(1)(b)(8) and NAC 454.060(1).

SECOND CAUSE OF ACTION

Falsifying Signatures

(Respondents Weingrow, Jaffer, and Rubio-Veronica)

XIV.

By falsifying Weingrow's signature on written prescriptions for controlled substances and/or dangerous drugs that Weingrow's medical office dispensed, and/or by allowing Jaffer, Rubio-Veronica and Office Staff to falsify Weingrow's signature on prescriptions for controlled substances and/or dangerous drugs that Weingrow's medical office dispensed, Respondents, and each of them, engaged in fraudulent and/or deceitful transactions. Those actions constitute unprofessional conduct and conduct contrary to the public interest per NAC 639.945(1)(h).

THIRD CAUSE OF ACTION

Unlicensed Practice of Medicine

(Respondents Weingrow, Jaffer, and Rubio-Veronica)

XV.

By signing prescriptions as if they were authorized practitioners, and/or by allowing Jaffer, Rubio-Veronica and Office Staff to sign prescriptions as if they were authorized practitioners, Respondents, and each of them, "performed acts, tasks or operations for which licensure, certification or registration is required without the required license, certificate or registration, or knowingly allowed such conduct to occur." Those actions constitute unprofessional conduct and conduct contrary to the public interest per NAC 639.945(k).

FOURTH CAUSE OF ACTION
Failure to Adequately Secure Drugs
 (Respondent Weingrow)

XVI.

A dispensing practitioner must secure all controlled substances and dangerous drugs in his inventory in a locked storage area to which the dispensing practitioner has the only key or lock. *See* NAC 639.742(3)(c) and (4)(a), *see also* NAC 639.745(1)(c). Respondent Weingrow violated those regulations by allowing Jaffer, Rubio-Veronica and Office Staff access to his inventory of controlled substances and dangerous drugs when he was not onsite at his facility.

FIFTH CAUSE OF ACTION
Unlawful Access to Drugs
 (Respondents Weingrow, Jaffer and Rubio-Veronica)

XVII.

A dispensing technician may not access the room or cabinet in which controlled substances and/or dangerous drugs are stored unless the dispensing practitioner is on-site at the facility. *See* NAC 639.743. Respondents Jaffer and Rubio-Veronica accessed controlled substances and dangerous drugs when Weingrow was not onsite at the office, which conduct Weingrow allowed. By doing so, Respondents, and each of them, violated NAC 639.743.

SIXTH CAUSE OF ACTION
Dispensing When Practitioner Off-Site
 (Respondent Weingrow)

XVIII.

A dispensing practitioner may not allow his staff to dispense any controlled substance or dangerous drug when he is not on-site at his facility. *See* NAC 639.742(3)(e). By allowing Jaffer, Rubio-Veronica and/or Office Staff to dispense controlled substances and dangerous drugs to patients when he was not on-site at his medical facility, Weingrow violated NAC 639.742(3)(e).

SEVENTH CAUSE OF ACTION
Dispensing When Practitioner Off-Site
 (Respondents Jaffer and Rubio-Veronica)

XIX.

No person may dispense any controlled substance or dangerous drug from a dispensing practitioner's office when the dispensing practitioner is not on-site at his facility. *See* NAC 639.742(3)(e). Jaffer and Rubio-Veronica dispensed medications to patients while Weingrow was not on-site at his facility. By doing so Jaffer and Rubio-Veronica violated NAC 639.742(3)(e).

EIGHTH CAUSE OF ACTION
Dispensing to Off-Site Patients
 (Respondents Weingrow, Jaffer, and Rubio-Veronica)

XX.

A dispensing practitioner is required to ensure that "[a]ll drugs are dispensed only to the patient personally at the [dispensing practitioner's] facility." *See* NAC 639.742(3)(f). Weingrow allowed Jaffer, Rubio-Veronica and Office Staff to dispense to patients who were not at Weingrow's facility, including dispensing by U.S. Mail and Federal Express. By doing so, Weingrow, Jaffer and Rubio-Veronica violated NAC 639.742(3)(f).

NINTH CAUSE OF ACTION
Dispensing Without Dispensing Practitioner Verification
 (Respondents Weingrow, Jaffer, and Rubio-Veronica)

XXI.

By dispensing prescriptions for controlled substances and dangerous drugs that were not first checked and initialed by Weingrow – when Weingrow was not at the facility – and by allowing his staff to dispense prescriptions without personally checking the medications before they were dispensed, Respondents, and each of them, violated NAC 639.743(2)(a) and/or (b).

TENTH CAUSE OF ACTION

Falsifying Patient Records

(Respondents Weingrow, Jaffer, and Rubio-Veronica)

XXII.

By falsely documenting patient initials and dates of service on patient informed consent labels, and by allowing his staff to falsely document that information, Jaffer, Rubio-Veronica and Weingrow are each guilty of “unprofessional conduct and conduct contrary to the public interest”, as defined at NAC 639.945(1)(h).

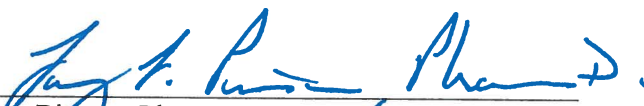
XXIII.

For the misconduct and violations described in each of the Causes of Action above, Respondents, and each of them, are subject to discipline per NRS 639.210(1), (4), (11) and/or (12), and NRS 639.255, as well as NAC 639.7445.

XXIV.

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.

Signed this 27th day of February, 2018.



 Larry Pinson, Pharm.D., 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 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.

ORIGINAL

FILED

MAR 23 2018

NEVADA STATE BOARD
OF PHARMACY

Jason G. Weiner, Esq.
Nevada Bar No. 7555
Gregory V. Cortese, Esq.
Nevada Bar No. 6610
WEINER LAW GROUP, LLC.
2820 W. Charleston Blvd., #35
Las Vegas, Nevada 89102
Phone: (702) 202-0500
Fax: (702) 202-4999
gcortese@weinerlawnevada.com
Attorneys for Respondent
Craig Weingrow, M.D.

BEFORE THE NEVADA STATE BOARD OF PHARMACY

NEVADA STATE BOARD OF
PHARMACY,

Petitioner,

v.

CRAIG WEINGROW, M.D.,
Certificate of Registration Nos. CS20272
PD00502,

TERESA JAFFER, T.D.
Certificate of Registration No. TD01408,

and

MARECXY RUBIO-VERONICA, T.D.,
Certificate of Registration No. TD01461

Respondents.

CASE NOS. 17-066-CS-S
17-066-TD-A-S
17-066-TD-B-S

ANSWER AND NOTICE OF DEFENSE
OF CRAIG WEINGROW, M.D.

Respondent CRAIG WEINGROW, M.D., 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: None.

WEINER LAW GROUP, LLC
2820 W. Charleston Blvd. #35
Las Vegas, Nevada 89102
Tel: (702) 202-0500 Fax: (702) 202-4999

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2820 W. Charleston Blvd. #35
Las Vegas, Nevada 89102
Tel: (702) 202-0500 Fax: (702) 202-4999

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

Respondent CRAIG WEINGROW, M.D., admits the following allegations: I, III (3), III (7), III (8), III (9), IV, V, VI, VII, VIII, IX, X, XI, XII

Respondent CRAIG WEINGROW, M.D., denies the following allegations: III (1), III (2), III (4), III (5), III (6), III (10), XIII, XIV, XV, XVI, XVII, XVIII, XIX, XX, XXI, XXII, XXIII, XXIV

Respondent CRAIG WEINGROW, M.D., is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraphs: II, III (11),


Any paragraph not explicitly admitted or denied is hereby denied.

Therefore, Respondent CRAIG WEINGROW, M.D., respectfully requests:

1. That the Board deny the requested relief in the Complaint; and
2. For such other relief as the Board finds to be just and proper.

DATED this 22 day of March, 2018.

WEINER LAW GROUP, LLC



Jason G. Weiner, Esq.
Nevada Bar No. 7555
Gregory V. Cortese, Esq.
Nevada Bar No. 6610
2820 W. Charleston Blvd., Ste. 35
Las Vegas, NV 89102
Attorneys for Respondent
Craig Weingrow, M.D.

WEINER LAW GROUP, LLC
2820 W. Charleston Blvd. #35
Las Vegas, Nevada 89102
Tel: (702) 202-0500 Fax: (702) 202-4999

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 22nd day of March, 2018, I served a true and correct copy of the aforementioned **ANSWER AND NOTICE OF DEFENSE OF CRAIG WEINGROW, M/D.** by facsimile and by U.S. Mail addressed to the following:

Larry Pinson, Pharm.D
Executive Secretary
Nevada State Board of Pharmacy
431 W. Plumb Lane
Reno, NV 89509
FaX: (775) 850-1444


An Employee of the Weiner Law Group, LLC