

5

MATRIX GUIDELINE FOR DISCIPLINARY ACTIONS

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

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

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

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

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

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

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

Updated May 2019

ANNUAL DISCIPLINE CASES			
Reporting Period: January 2020 – September 2020			
FINDING	HARM	DISCIPLINE INDIVIDUAL	DISCIPLINE FACILITY
PTs DS and MY created fraudulent prescriptions and diverted controlled substances from their employing pharmacy.	N/A	Pharmaceutical technician registrations revoked.	N/A
RPH SS failed to maintain Schedule II perpetual inventories and complete invoices for the purchase of controlled substances.	N/A	Voluntary surrender of Nevada pharmacist registration; \$750 administrative fee.	\$3,000 fine; \$750 administrative fee.
Wholesaler WP failed to comply with the requirements of NRS 639.500.	N/A	N/A	Wholesaler license suspended; suspension stayed pending receipt, review and verification of the required background check materials.
AN failed to timely renew his CS registration and wrote 33 prescriptions without a valid registration.	N/A	Letter of reprimand; \$5,000 fine; \$950 administrative fee.	N/A
RPH failed to identify a misbranding error.	N/A	\$250 fine; \$250 administrative fee; two additional CEs on error prevention.	\$3,000 fine; \$250 administrative fee.
RPH DC failed to comply with the 2/12/19 Board Order; failed to timely renew his pharmacist registration and engaged in the practice of pharmacy without a valid registration.	N/A	RPH registration revoked.	N/A
Wholesaler SWS failed to comply with the requirements of NRS 639.500.	N/A	N/A	Wholesaler surrendered license.
KH failed to timely renew her CS registration and wrote 263 prescriptions without a valid registration.	N/A	Letter of reprimand; \$5,000 fine; \$950 administrative fee.	N/A
RPH ST verified the data and final product as correct when it was not and dispensed losartan potassium 25mg tablets rather than the 50 mg. tablets prescribed. ST failed to provide adequate counseling.	N/A	Letter of reprimand; \$1,000 fine; \$1,000 attorney's fees and costs; 2 additional CEs on error prevention.	WG shall pay a \$1,000 fine; \$1,000 attorney's fees and costs.
MDs RB-R and AB pre-signed controlled substance prescriptions that were issued to patients while Respondents were travelling overseas. Respondents allowed APRN DC-L to prescribe controlled substances	N/A	Each respondent shall receive a letter of reprimand; \$5,000 fine; \$2,000 attorney's fees and costs.	N/A

ANNUAL DISCIPLINE CASES			
Reporting Period: January 2020 – September 2020			
FINDING	HARM	DISCIPLINE INDIVIDUAL	DISCIPLINE FACILITY
and dangerous drugs prior to being licensed to do so.			
RPH JA failed to maintain perpetual inventories, biennial inventories, records of controlled substance purchases; aided or abetted a person not licensed to practice pharmacy; failed to properly store expired drugs; failure to properly label prescription drugs; continued to practice pharmacy even as his behavior rendered him incompetent, unskillful and negligent. RPH JA and PT FA engaged in unlawful dispensing and sales. PT FA practiced as a registered pharmacist without registration.	N/A	JA voluntarily surrendered pharmacist registration; may not work for any facility licensed by the Board unless he petitions and is granted reinstatement by the Board; if he applies for reinstatement, he shall appear before the Board and he shall successfully complete an evaluation of his competence to practice pharmacy. FA voluntarily surrendered technician registration. She may not work for any facility licensed by the Board unless she petitions and is granted reinstatement by the Board. Respondents are jointly liable and shall pay \$2,500 fine; \$3,000 attorney fees and costs.	DT voluntarily surrendered pharmacy license and may not operate in any capacity unless it has petitioned the Board and is granted reinstatement.
PT JW's application for registration approved subject to the requirement that he enroll in PRN for one year. JW was terminated from PRN due to lack of attendance.	N/A	Revocation	N/A
APRN SJ, unlawfully prescribed controlled substances/dangerous drugs under Dr. AQ's name and credentials.	N/A	Public reprimand, \$1000 fine, \$950 in attorney's fees and costs.	N/A
Rx WM responsible for the actions of personnel in their employ in which two unauthorized refills were dispensed.	N/A	N/A	\$1000 fine, \$1000 attorney's fees and costs.
RPH PL diverted drugs from his employing pharmacy.	N/A	Revocation	N/A
Dr. VW wrote multiple prescriptions for controlled substances from June 2009 to the present while her license to practice medicine in Nevada was inactive. Dr. VW	N/A	\$14,000 fine, \$1,962.87 attorney's fees and costs.	N/A

ANNUAL DISCIPLINE CASES			
Reporting Period: January 2020 – September 2020			
FINDING	HARM	DISCIPLINE INDIVIDUAL	DISCIPLINE FACILITY
falsely represented to the Board that she held an active and current Nevada license with the NSBME on her CS renewal applications for the years 2010, 2012, 2014, 2016, and 2018. June 2020, the Board served Dr. VW with an order to cease and desist prescribing controlled substances for Nevada patients; Dr.VW surrendered her DEA which operated as an immediate suspension of her CS registration.			

5A

FILED

FEB 13 2020

NEVADA STATE BOARD
OF PHARMACY

BEFORE THE NEVADA STATE BOARD OF PHARMACY

NEVADA STATE BOARD OF PHARMACY,

Petitioner,

v.

JOSHUA AIGHOBAHI, RPH,
Certificate of Registration No. 18747,KATHERINE KUEHL, RPH,
Certificate of Registration No. 11172,FELICIA AIGHOBAHI, PT,
Certificate of Registration No. PT17660, andDIVINE TOUCH SERVICES PHARMACY,
Pharmacy License No. PH03411,

Respondents.

Case Nos. 19-035-RPH-A-S
19-035-RPH-B-S
19-035-PT-S
19-035-PH-SNOTICE OF INTENDED ACTION
AND ACCUSATION

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

JURISDICTION

I.

The Nevada State Board of Pharmacy (Board) has jurisdiction over this matter because at the time of the events alleged herein, Respondent Joshua Aighobahi, R.Ph., Certificate of Registration No. 18747, and Respondent Katherine Kuehl, R.Ph., Certificate of Registration No. 11172 (Kuehl), were pharmacists registered by the Board, Respondent Felicia Aighobahi, Certificate of Registration No. PT17660, was a pharmaceutical technician registered by the Board, and Respondent Divine Touch Services Pharmacy, License No. PH03411 (Divine Touch), was a pharmacy licensed by the Board.

FACTUAL ALLEGATIONS

II.

Joshua Aighobahi owns and operates Divine Touch; he was the managing pharmacist of Divine Touch and the only registered pharmacist employed in the pharmacy until approximately October 31, 2019.

III.

Felicia Aighobahi is Joshua Aighobahi's wife and employed as a pharmaceutical technician by Divine Touch.

IV.

Throughout 2019, Felicia Aighobahi performed functions that are limited by law to a registered pharmacist and attributed the performance of those functions to Joshua Aighobahi.

V.

During annual inspections of Divine Touch on or about September 7, 2017, September 8, 2018, and September 23, 2019, Board staff observed that Joshua Aighobahi failed to conduct a proper biennial inventory of the pharmacy.

VI.

During the September 23, 2019, annual inspection Board staff observed that Joshua Aighobahi exhibited behavior that rendered him incapable of safely and competently practicing pharmacy, that he failed to maintain an accurate perpetual inventory of schedule II-controlled substances, and that he failed to maintain DEA 222 forms.

VII.

On or about October 10, 2019, Board staff conducted a joint inspection of Divine Touch with the Drug Enforcement Administration (DEA). During the DEA audit of controlled substances at Divine Touch, both Board staff and DEA investigators observed that Joshua

Aighobahi exhibited behavior that rendered him incapable of complying with the audit and/or of safely and competently practicing pharmacy.

VIII.

On or about October 21, 2019, Joshua Aighobahi represented to Board staff that he would voluntarily cease operation of Divine Touch until he either successfully completed an evaluation of his competence to practice pharmacy pursuant to NRS 639.2445 or, alternatively, placed a managing pharmacist approved by Board staff in charge of the pharmacy pursuant to NRS 639.220(1).

IX.

On or about October 31, 2019, Joshua Aighobahi represented to Board staff through his legal counsel that he had employed Kuehl as the managing pharmacist for Divine Touch and had ceased practicing pharmacy.

X.

On or about January 9, 2020, Board staff conducted an inspection of Divine Touch and observed that Joshua Aighobahi continued to practice pharmacy even as his behavior continued to render him incapable of safely and competently practicing pharmacy, that Kuehl as the new managing pharmacist failed to properly conduct an initial inventory of the pharmacy, and that prescription labels did not include the expiration date for the medication.

XI.

During the inspections of Divine Touch on or about September 23, 2019, October 10, 2019, and January 9, 2020, Board staff observed that the pharmacy had possession of expired controlled substances and dangerous drugs for dispensing that were not properly segregated.

XII.

On or about January 21, 2020, Kuehl represented to Board staff that Joshua Aighobahi continued to practice pharmacy and perform certain functions reserved for a managing pharmacist.

APPLICABLE LAW

XIII.

NRS 453.246 Recordkeeping and inventory requirements for registrants. Persons registered to dispense controlled substances pursuant to the provisions of NRS 453.011 to 453.552, inclusive, shall keep records and maintain inventories in conformance with the recordkeeping and inventory requirements of state and federal law and with any additional regulations the Board issues.

XIV.

NRS 453.251 Order forms. Controlled substances listed in schedules I and II may be distributed by a registrant or licensed pharmacy to another registrant or licensed pharmacy only pursuant to an order form and may be received by a registrant only pursuant to an order form. Compliance with the provisions of federal law respecting order forms shall be deemed in compliance with this section.

XV.

NRS 453.326 Unlawful acts relating to recordkeeping, inspections and knowingly keeping or maintaining a place where controlled substances are unlawfully used, kept or sold; penalty.

1. It is unlawful for a person:

(a) To refuse or fail to make, keep or furnish any record, notification, order form, statement, invoice or information required under the provisions of NRS 453.011 to 453.552, inclusive;

....

XVI.

NRS 453.236 Suspension, revocation of registration; seizure, placement under seal of controlled substance owned or possessed by registrant; notification of Drug Enforcement Administration and Division concerning suspension, revocation or forfeiture; registrant prohibited from employing person whose pharmacist's certificate was suspended or revoked.

1. The Board may suspend or revoke a registration pursuant to NRS 453.231 to dispense a controlled substance upon a finding that the registrant has:

....

(d) Committed an act that would render registration under NRS 453.231 inconsistent with the public interest as determined pursuant to that section.

XVII.

NRS 639.100(1)(a) states in relevant part: "It is unlawful for any person to sell or dispense, or permit to be . . . sold or dispensed, any drug, . . . unless the person . . . [i]s a registered pharmacist. *See also* 21 U.S.C. § 841(a).

XVIII.

NRS 639.210 Grounds for suspension or revocation of certificate, license, registration or permit or denial of application. The Board may suspend or revoke any certificate, license, registration or permit issued pursuant to this chapter, and deny the application of any person for a certificate, license, registration or permit, if the holder or applicant:

1. Is not of good moral character;

....

4. Is guilty of unprofessional conduct or conduct contrary to the public interest;

....

9. Has willfully made to the Board or its authorized representative any false statement which is material to the administration or enforcement of any of the provisions of this chapter;

....

11. Has violated any provision of the Federal Food, Drug and Cosmetic Act or any other federal law or regulation relating to prescription drugs;

12. Has violated, attempted to violate, assisted or abetted in the violation of or conspired to violate any of the provisions of this chapter or any law or regulation relating to drugs, the manufacture or distribution of drugs or the practice of pharmacy, or has knowingly permitted, allowed, condoned or failed to report a violation of any of the provisions of this chapter or any law or regulation relating to drugs, the manufacture or distribution of drugs or the practice of pharmacy committed by the holder of a certificate, license, registration or permit;

....

15. Has, as a managing pharmacist, violated any provision of law or regulation concerning recordkeeping or inventory in a store over which he or she presides, or has knowingly allowed a violation of any provision of this chapter or other state or federal laws or regulations relating to the practice of pharmacy by personnel of the pharmacy under his or her supervision;

....

17. Has failed to maintain and make available to a state or federal officer any records in accordance with the provisions of this chapter or chapter 453 or 454 of NRS;

XIX.

NRS 639.2445 Physical or mental examination of holder of certificate believed to be incompetent; competency hearing; probation for use of alcohol or drugs.

1. Whenever the Board believes that a holder of a certificate is or has become incompetent to practice pharmacy by reason of any physical or mental injury, illness or disability or by reason of chronic or excessive use of alcohol or drugs, the Board may order that the holder of the certificate submit to a physical or psychiatric examination, or both, at the expense of the Board.

2. The Board shall designate a physician or a psychiatrist or both, as the case may be, to conduct the examination or examinations of the holder of the certificate and furnish the Board and the holder of the certificate with a report of the findings. If the holder of the certificate is dissatisfied with the findings, the holder of the certificate may obtain an independent examination and report at his or her own expense, not later than 10 days following receipt of the initial report.

3. Upon receipt of the findings the Board shall conduct a hearing to determine whether the holder of the certificate is competent to practice pharmacy. Except as provided in subsection 4, if the Board finds that the holder of the certificate is not competent to practice pharmacy, it shall order an immediate suspension of his

or her right to practice pharmacy, and the suspension remains in effect until the Board determines that a certificate may be reinstated.

4. The Board may place on probation a holder of a certificate who is not competent to practice pharmacy by reason of chronic or excessive use of alcohol or drugs if the holder of the certificate voluntarily enters and completes a program of treatment approved by the Board and complies with any other conditions imposed by the Board.

XX.

NRS 639.282 Unlawful possession or sale of certain pharmaceutical preparations, drugs or chemicals; destruction.

1. Except as otherwise provided . . . it is unlawful for any person to have in his or her possession, or under his or her control, for the purpose of resale, or to sell or offer to sell or dispense or give away, any pharmaceutical preparation, drug or chemical which:

. . . .

(d) Is no longer safe or effective for use, as indicated by the expiration date appearing on its label; or

XXI.

NAC 453.475 Initial and biennial inventory of controlled substances by new managing pharmacist.

1. A pharmacist who is hired or promoted to manage a pharmacy pursuant to the provisions of NRS 639.220 shall:

(a) Within 48 hours after first reporting for duty as the managing pharmacist, conduct an inventory of the controlled substances of the pharmacy with the pharmacist who preceded him or her as the managing pharmacist. The pharmacists shall sign the inventory.

(b) After the date on which the inventory required pursuant to paragraph (a) was taken, conduct an inventory of the controlled substances of the pharmacy at least once every 2 years during the course of his or her employment as managing pharmacist at the pharmacy. The managing pharmacist may conduct the biennial inventory on any date which is within 2 years of the date on which the previous biennial inventory was conducted.

2. An inventory required by subsection 1 must be:

(a) Conducted according to the method prescribed by the provisions of 21 C.F.R. Part 1304; and

(b) Placed in the records of the controlled substances of the pharmacy.

XXII.

NAC 639.050 Storage and destruction of certain controlled substances.

....

2. Each practitioner or pharmacy shall physically separate each controlled substance which is outdated, damaged, deteriorated, misbranded or adulterated from the balance of its stock medications.

XXIII.

NAC 639.473 Procurement and storage of drugs.

1. The managing pharmacist of a pharmacy is responsible for the procurement and storage of drugs in that pharmacy.

....

3. Outdated drugs must be removed from stock and identified and maintained separately from other stock until disposal.

XXIV.

NAC 639.482 Maintenance and availability of records.

1. Each record required to be kept pursuant to NAC 639.483 to 639.489, inclusive, must be kept by a pharmacy for at least 2 years after the date of the record.

2. Records maintained by a pharmacy must be made available for inspection and copying upon the request of the Board, its representatives, or another authorized local, state or federal law enforcement agency.

XXV.

NAC 639.485 Maintenance of records for controlled substances.

1. A pharmacy shall maintain records for controlled substances:

- (a) In a readily retrievable manner.

- (b) In a manner that establishes the receipt, distribution and destruction of all controlled substances handled by the pharmacy.

2. A pharmacy shall maintain a perpetual inventory of any controlled substance listed in schedule II.

3. Records of the distribution of controlled substances listed in schedule II, schedule III or schedule IV must include:

- (a) The name of the drug, dosage form and strength.

- (b) The name of the pharmacist distributing or authorizing the distribution of the controlled substance.

(c) The name of the authorized person receiving the controlled substance. This information may be included on the record of administration.

(d) The location to which the controlled substance is being distributed.

(e) Controlled substances returned to the pharmacy.

(f) A record of any waste of any prepared or partially administered dose of a controlled substance, which must be witnessed and cosigned by another person who is licensed to provide medical care.

XXVI.

NAC 639.487 Maintenance of additional records.

In addition to any other requirements for keeping records, a pharmacy shall maintain the following records:

1. Copy 3 of the order form of the Drug Enforcement Administration (DEA 222C), properly dated, initialed and filed, copies of each unaccepted or defective order form, and any attached statements or other documents.

2. Suppliers' invoices of controlled substances and dangerous drugs. The pharmacist or other personnel of the pharmacy shall clearly record on each invoice the actual date on which the controlled substance or dangerous drug was received.

3. Suppliers' credit memos for controlled substances and dangerous drugs.

4. The biennial inventory of controlled substances required by the Drug Enforcement Administration.

5. Any reports of theft or significant loss of controlled substances submitted to the Drug Enforcement Administration.

6. Reports of the surrender or destruction of controlled substances or dangerous drugs, or both, to an appropriate state or federal agency.

7. A register book for nonprescription drugs listed in schedule V.

XXVII.

NAC 639.510 Maintenance and storage of pharmaceutical stock.

-
2. The managing pharmacist of a pharmacy:

(a) Is responsible for, and must have knowledge and control of, the acquisition and disposition by the pharmacy of the stock of the pharmacy; and

(b) Shall ensure that the records relating to the acquisition or disposition of the stock of the pharmacy are maintained as required by law.

3. The dangerous drugs, controlled substances, chemicals, biologicals and devices kept in the stock of a pharmacy must meet all of such standards of purity and strength as established by current official compendia or as established on the appropriate labels, and must be properly stored. Any preparation which varies from such standards of purity and strength or becomes unfit for use from deterioration or other cause must not be carried in stock and must be destroyed in a manner provided by law when so ordered by an agent of the Board.

XXVIII.

NAC 639.512 Class A and B packaging: Label; expiration date; log.

....

2. Each unit dose of a controlled substance or dangerous drug packaged or repackaged by a pharmacy must contain a label which specifies:

....

(c) The expiration date; and

....

XXIX.

NAC 639.523 Physical address for delivery of drugs.

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3. A pharmacist employed by a pharmacy shall acknowledge on every invoice that the drugs listed in the invoice were physically received by the pharmacy at the physical address to which the Board has issued the license of the pharmacy.

XXX.

NAC 639.601 Prescription drugs: Separation and disposal of certain drugs.

1. A prescription drug that is outdated, damaged, deteriorated, misbranded or adulterated must be separated from other prescription drugs until it is destroyed or returned to the supplier.

....

XXXI.

NAC 639.945 Unprofessional conduct; owner responsible for acts of employees.

1. The following acts or practices by a holder of any license, certificate or registration issued by the Board or any employee of any business holding any such license, certificate or registration are declared to be, specifically but not by way of limitation, unprofessional conduct and conduct contrary to the public interest:

-
- (h) Performing or in any way being a party to any fraudulent or deceitful practice or transaction.
 - (i) Performing 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.
 - (j) Aiding or abetting a person not licensed to practice pharmacy in the State of Nevada.
 - (k) Performing any act, task or operation for which licensure, certification or registration is required without the required license, certificate or registration.
-
- (m) Failing to provide any document, data or information that is required to be made and maintained pursuant to chapters 453, 454, 585 and 639 of NRS and chapters 453, 454, 585 and 639 of NAC to a member of the Board or a member of the staff of the Board upon his or her request.

....

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

XXXII.

NAC 639.955 Imposition of fines; authority to take disciplinary action.

1. Except as otherwise provided in this section, the Board may impose a fine against a pharmacist or pharmacy pursuant to paragraph (f) of subsection 1 of NRS 639.255 according to the following schedule:

-
- (h) For failing to make or maintain a biennial inventory of controlled substances.....\$1,000.00
-

2. The Board may impose a fine for a violation listed in subsection 1 that is less than or greater than the amount set forth in that subsection for that violation after giving consideration to any aggravating and mitigating factors that relate to the violator's role in and responsibility for the conduct for which the fine is being imposed, and the unique circumstances of each case.

....

5. The Board may, as it deems appropriate, impose a fine for a violation not listed in subsection 1 that is commensurate with the severity of the violation.

6. No fine imposed by the Board will exceed \$10,000.

....

8. This section will be construed and applied so as to preserve the discretion of the Board to take any disciplinary action authorized by NRS 639.255.

XXXIII.

21 C.F.R. § 1304.11 Inventory requirements.

....

(c) *Biennial inventory date.* After the initial inventory is taken, the registrant shall take a new inventory of all stocks of controlled substances on hand at least every two years. The biennial inventory may be taken on any date which is within two years of the previous biennial inventory date.

XXXIV.

21 C.F.R. § 1304.21 General requirements for continuing records.

(a) Every registrant required to keep records pursuant to §1304.03 shall maintain, on a current basis, a complete and accurate record of each substance manufactured, imported, received, sold, delivered, exported, or otherwise disposed of by him/her, and each inner liner, sealed inner liner, and unused and returned mail-back package, except that no registrant shall be required to maintain a perpetual inventory.

XXXV.

21 U.S.C. § 842(a)(5) states in relevant part: "It shall be unlawful for any person . . . to refuse or negligently fail to make, keep, or furnish any record, report, notification, declaration,

order or order form, statement, invoice, or information required under this subchapter or subchapter II[.]”

FIRST CAUSE OF ACTION

Failure to Maintain Perpetual Inventories of Controlled Substances (Respondents Joshua Aighobahi and Divine Touch)

XXXVI.

By failing to maintain at least two years’ worth of perpetual inventories of schedule II-controlled substances in a readily retrievable manner, Joshua Aighobahi and Divine Touch violated NRS 453.246, NAC 639.485(1) and (2), and NAC 639.482(a) and (b), engaged in unprofessional conduct as defined in NAC 639.945(1)(i) and (m), and are subject to discipline pursuant to NRS 453.236(1) and NRS 639.210(4), (12) and (17).

SECOND CAUSE OF ACTION

Failure to Maintain Accurate Biennial Inventories of Controlled Substances (Respondents Joshua Aighobahi and Divine Touch)

XXXVII.

By failing to maintain at least two years’ worth of biennial inventories of its controlled substances in a readily retrievable manner, Joshua Aighobahi and Divine Touch violated NRS 453.246, NAC 453.475(1)(b) and (2), NAC 639.482(a) and (b), NAC 639.487(4), NAC 639.510, 21 U.S.C. § 842(a)(5) and 21 CFR § 1304.11, engaged in unprofessional conduct as defined in NAC 639.945(1)(i) and (m), and are subject to discipline pursuant to NRS 453.236(1), NRS 639.210(4), (12) and (17).

THIRD CAUSE OF ACTION

Failure to Maintain Records of Controlled Substance Purchases (Respondents Joshua Aighobahi and Divine Touch)

XXXVIII.

By failing to maintain accurate and complete invoices for the controlled substances Divine Touch purchased and received, Joshua Aighobahi and Divine Touch violated NRS 453.246, NRS 453.251, NRS 453.326(1)(a), NAC 639.510, NAC 639.523(3), 21 U.S.C. §

842(a)(5) and 21 CFR § 1304.21, engaged in unprofessional conduct as defined in NAC 639.945(1)(i) and (m), and are subject to discipline pursuant to NRS 453.236(1), NRS 639.210(4), (11), (12) and (17).

FOURTH CAUSE OF ACTION

**Fraudulent or Deceitful Practice/Practicing as a Registered Pharmacist Without
Registration**
(Respondent Felicia Aighobahi)

XXXIX.

By performing functions that are limited by law to a registered pharmacist and attributing the performance of those functions to Joshua Aighobahi, Felicia Aighobahi was party to a fraudulent or deceitful practice or transaction, engaged in unprofessional conduct as defined in NAC 639.945(1)(h) and (k), and is subject to discipline pursuant to NRS 639.210(4).

FIFTH CAUSE OF ACTION

**Fraudulent or Deceitful Practice /Aiding or Abetting a Person Not Licensed to Practice
Pharmacy**
(Respondent Joshua Aighobahi)

XL.

By permitting Felicia Aighobahi to perform duties that are limited by law to a registered pharmacist, Joshua Aighobahi was party to a fraudulent or deceitful practice or transaction, aided or abetted a person not licensed to practice pharmacy in the State of Nevada, engaged in unprofessional conduct as defined in NAC 639.945(1)(h) and (j), and is subject to discipline pursuant to NRS 639.210(4).

SIXTH CAUSE OF ACTION

Unlawful Dispensing and Sales
(Respondents Joshua Aighobahi and Felicia Aighobahi)

XLI.

By permitting Felicia Aighobahi to perform functions that are limited by law to a registered pharmacist and attributing the performance of those functions to Joshua Aighobahi, Joshua Aighobahi and Felicia Aighobahi violated, attempted to violate, assisted or abetted in the

violation of or conspired to violate NRS 453.331(1)(c), NRS 453.381(8), NRS 453.401(1)(a), NRS 639.100(1)(a), NRS 639.284 and/or 21 U.S.C. § 841(a), and are subject to discipline pursuant to NRS 639.210(9), (11) and (12).

SEVENTH CAUSE OF ACTION

Failure to Conduct Initial Inventory of Controlled Substances (Respondent Kuehl)

XLII.

By failing to properly conduct an initial inventory of the pharmacy as the new managing pharmacist, Kuehl violated NRS 453.246, NAC 453.475(1)(a) and (2) and NAC 639.510, engaged in unprofessional conduct as defined in NAC 639.945(1)(i) and (m), and is subject to discipline pursuant to NRS 639.210(4), (15) and (17).

EIGHTH CAUSE OF ACTION

Failure to Properly Store Expired Drugs (Respondents Joshua Aighobahi, Kuehl and Divine Touch)

XLIII.

By failing to segregate expired drugs from unexpired drugs and secure those expired drugs in an area where they could not be used to administer or fill prescriptions, Joshua Aighobahi, Kuehl and Divine Touch violated NRS 639.282(1)(d), NAC 639.050(2), NAC 639.473(1) and (3), NAC 639.510(3) and NAC 639.601(1), engaged in unprofessional conduct as defined in NAC 639.945(i), and are subject to discipline pursuant to NRS 639.210(4), (12) and (15).

NINTH CAUSE OF ACTION

Failure to Properly Label Prescription Drugs (Respondents Joshua Aighobahi, Kuehl and Divine Touch)

XLIV.

By failing to include the expiration date for medication on prescription labels, Joshua Aighobahi, Kuehl and Divine Touch violated NAC 639.512(2)(c), engaged in unprofessional

conduct as defined in NAC 639.945(i), and are subject to discipline pursuant to NRS 639.210(4), (12) and (15).

TENTH CAUSE OF ACTION

Incompetent, Unskillful and Negligent Practice of Pharmacy
(Respondent Joshua Aighobahi)

XLV.

By continuing to practice pharmacy even as his behavior rendered him incapable of safely and competently practicing pharmacy, Joshua Aighobahi performing his duties as a registered pharmacist and as the owner of Divine Touch in an incompetent, unskillful or negligent manner, engaged in unprofessional conduct as defined in NAC 639.945(1)(i), is subject to discipline pursuant to NRS 639.210(4), and should be required to submit to a physical or psychiatric examination, or both, pursuant to NRS 639.2445.

ELVENTH CAUSE OF ACTION

Managing Pharmacist Responsibilities
(Respondents Joshua Aighobahi and Kuehl)

XLVI.

As the managing pharmacists of Divine Touch at the time of the violations alleged herein, either Joshua Aighobahi and Kuehl are responsible for those violations, including those of the pharmacy's employees, pursuant to NRS 639.220(1), NAC 639.473, NAC 639.510 and NAC 639.702, and are subject to discipline pursuant to NRS 639.210(15).

TWELVTH CAUSE OF ACTION

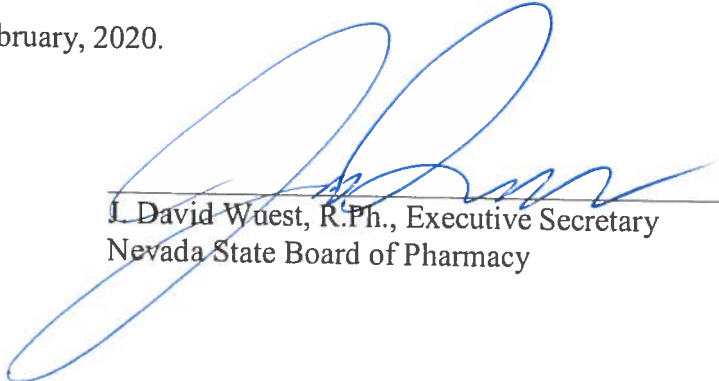
Pharmacy/Pharmacy Owner Responsibility
(Respondent Joshua Aighobahi)

XLVII.

As the owner of Divine Touch at the time of each of the violations alleged herein, Joshua Aighobahi is responsible for the violations, including those of his employees, pursuant to NRS 639.230(5) and NAC 639.945(2), and is subject to discipline pursuant to NRS 639.210(1), (4), (9) (11), (12), (15) and (17).

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

DATED this 13th day of February, 2020.



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

NOTICE TO RESPONDENT

You have the right to show the Nevada State Board of Pharmacy that your conduct, as alleged above, complies with all lawful requirements. NRS 233B.127(3). You have the right to a hearing before the Board to answer the Notice of Intended Action and Accusation and present evidence and argument on all issues involved, either personally or through counsel. NRS 233B.121; NRS 233B.127(3); NRS 622A.300(1) and (3); NRS 639.241. To do so, you must complete and file two (2) copies of the Answer and Notice of Defense served herewith, to be received by the Board's Reno office located at 985 Damonte Ranch Parkway – Suite 206, Reno, Nevada 89521, within twenty (20) days of your receipt of this Notice of Intended Action and Accusation. NRS 639.320; NRS 639.243. Your failure to timely file an Answer and Notice of Defense constitutes an admission of the charges and waiver of the right to a hearing. NRS 639.244. If you fail to appear at the hearing and the Board finds that you were given sufficient legal notice of the hearing, the Board may accept the allegations as true and may proceed to consider the case and render a decision. NRS 622A.350.

BEFORE THE NEVADA STATE BOARD OF PHARMACY

NEVADA STATE BOARD OF PHARMACY,

CASE NO. 19-035-RPH-B-S

Petitioner,

v.

**KATHERINE KUEHL, RPH,
Certificate of Registration No. 11172,**

**STATEMENT TO
THE RESPONDENT
AND NOTICE OF HEARING**

Respondent.

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

I.

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

II.

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

III.

The Board has scheduled your hearing on this matter for Wednesday, March 18, 2020, at 9:00 a.m. or soon thereafter. The hearing will occur at the Hilton Garden Inn, 7830 S. Las Vegas Blvd., Las Vegas, Nevada.

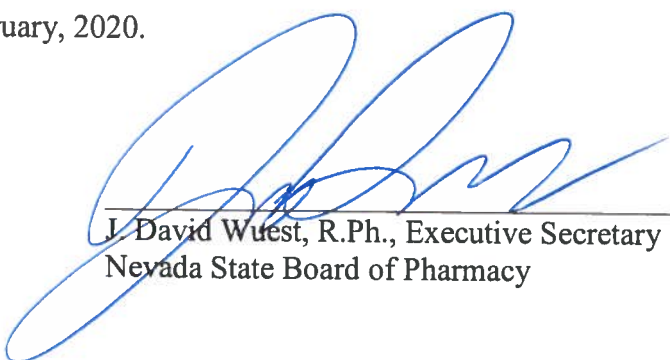
IV.

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

V.

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

DATED this 13th day of February, 2020.



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

BEFORE THE NEVADA STATE BOARD OF PHARMACY

NEVADA STATE BOARD OF PHARMACY,

Petitioner,

v.

KATHERINE KUEHL, RPH
Certificate of Registration No. 11172,

Respondent.

CASE NO. 19-035-RPH-B-S

**ANSWER AND NOTICE
OF DEFENSE**

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 February 2020.

KATHERINE KUEHL, RPH

CERTIFICATE OF SERVICE

I certify that I am an employee of the Nevada State Board of Pharmacy, and that on this 14th day of February, 2020, I served a true and correct copy of the foregoing document by Certified U.S. Mail to the following:

Joshua Aighobahi, R.Ph.
9504 Empire Rock Street
Las Vegas, NV 89143

Katherine L. Kuehl, R.Ph.
700 North Las Vegas Blvd.
Las Vegas, NV 89101

Felicia Aighobahi, PT
2208 E. Charleston Blvd., #B
Las Vegas, NV 89104

Divine Touch Services Pharmacy
2208 E. Charleston Blvd., #B
Las Vegas, NV 89104

Persi J. Mishel, Esq.
10161 Park Run Drive, Ste. 150
Las Vegas, NV 89145



SHIRLEY HUNTING

CERTIFICATE OF SERVICE

I certify that I am an employee of the Nevada State Board of Pharmacy, and that on this 5th day of March, 2020, I served a true and correct copy of the foregoing document by Certified U.S. Mail to the following:

Katherine L. Kuehl, RPH
2000 Paradise Rd., #1205
Las Vegas, NV 89104


SHIRLEY HUNTING

BEFORE THE NEVADA STATE BOARD OF PHARMACY

NEVADA STATE BOARD OF PHARMACY,

Petitioner,

v.

**JOSHUA AIGHOBAHI, RPH,
Certificate of Registration No. 18747,**

**KATHERINE KUEHL, RPH,
Certificate of Registration No. 11172,**

**FELICIA AIGHOBAHI, PT,
Certificate of Registration No. PT17660, and**

**DIVINE TOUCH SERVICES PHARMACY,
Pharmacy License No. PH03411,**

Respondents.

**Case Nos. 19-035-RPH-A-S
19-035-RPH-B-S
19-035-PT-S
19-035-PH-S**

**STIPULATION AND ORDER
(Respondent Katherine Kuehl)**

Brett Kandt, General Counsel for Petitioner the Nevada State Board of Pharmacy (Board), and Respondent Katherine Kuehl, R.Ph., Certificate of Registration No. 11172 (Kuehl), **HEREBY STIPULATE AND AGREE THAT:**

1. On or about March 19, 2020, Respondent was served with the Notice of Intended Action and Accusation (Accusation) on file in this matter together with the Statement to Respondent and Notice of Hearing.
2. Respondent is fully aware of her right to seek the advice of counsel in this matter prior to entering into this Stipulation.
3. Respondent is aware of her right to a hearing on the matters alleged in the Accusation, her right to reconsideration, her right to appeal and any and all other rights which may be accorded to her pursuant to NRS Chapter 233B (Nevada Administrative Procedure Act), NRS Chapter 622A (Administrative Procedure Before Certain Regulatory Bodies), and NRS Chapter 639 (Nevada Pharmacy Act).

4. Conditioned on the acceptance of this Stipulation by the Board, and with the exception of the right to challenge any determination that Respondent has failed to comply with the provisions of Paragraph 7 below, Respondent hereby freely and voluntarily waives her rights to a hearing, reconsideration, appeal and any and all other rights related to this action that may be accorded to her by NRS Chapter 233B (Nevada Administrative Procedure Act), NRS Chapter 622A (Administrative Procedure Before Certain Regulatory Bodies), and NRS Chapter 639 (Nevada Pharmacy Act).

5. Respondent does not contest the allegations in the Accusation, but acknowledges that Board staff prosecuting this case could present such evidence at an administrative hearing to establish a factual basis for the violations alleged therein, *to wit*, that:

A. By failing to properly conduct an initial inventory of the pharmacy as the new managing pharmacist, Kuehl violated NRS 453.246, NAC 453.475(1)(a) and (2) and NAC 639.510, engaged in unprofessional conduct as defined in NAC 639.945(1)(i) and (m), and is subject to discipline pursuant to NRS 639.210(4), (15) and (17);

B. By failing to segregate expired drugs from unexpired drugs and secure those expired drugs in an area where they could not be used to administer or fill prescriptions, Kuehl violated NRS 639.282(1)(d), NAC 639.050(2), NAC 639.473(1) and (3), NAC 639.510(3) and NAC 639.601(1), engaged in unprofessional conduct as defined in NAC 639.945(i), and is subject to discipline pursuant to NRS 639.210(4), (12) and (15);

C. By failing to include the expiration date for medication on prescription labels, Kuehl violated NAC 639.512(2)(c), engaged in unprofessional conduct as defined in NAC 639.945(i), and is subject to discipline pursuant to NRS 639.210(4), (12) and (15); and

D. As the managing pharmacist of Divine Touch at the time of the violations herein, Kuehl is responsible for those violations, including permitting Joshua Aighobahi to continue to practice pharmacy even as his behavior continued rendered him incapable of safely

and competently practicing pharmacy, pursuant to NRS 639.220(1), NAC 639.473, NAC 639.510 and NAC 639.702, and Kuehl is therefore subject to discipline pursuant to NRS 639.210(15).

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

7. In order to resolve this matter without incurring any further costs or the expense associated with a hearing, the Board and Respondent Katherine Kuehl, R.Ph., Certificate of Registration No. 11172, stipulate to the following penalties:

A. Kuehl shall receive a letter of reprimand from Board Staff regarding her duties and responsibilities as a managing pharmacist.

B. Kuehl may not be designated as and shall not work as managing pharmacist in any facility licensed by the Board for a period of one (1) year;

C. Kuehl shall complete two (2) extra hours of continuing education (CE) on pharmacy management, in addition to the CE hours she must otherwise complete to maintain her licensure;

D. Kuehl shall pay a fine of One-Thousand Dollars (\$1000.00) for the alleged violations, payable by *cashier's check* or *certified check* or *money order* made payable to "State of Nevada, Office of the Treasurer," to be received by the Board's Reno office located at 985 Damonte Ranch Parkway – Suite 206, Reno, Nevada 89521, in monthly installments of \$250.00 for four (4) months and due on the first date of each month commencing September 1, 2020; and

E. Kuehl shall pay Five-Hundred Dollars (\$500.00) to partially reimburse the Board for recoverable attorney's fees and costs incurred in investigating and prosecuting this matter, payable by *cashier's check* or *certified check* or *money order* made payable to "Nevada State Board of Pharmacy," to be received by the Board's Reno office located at 985 Damonte

Ranch Parkway – Suite 206, Reno, Nevada 89521, within thirty (30) of the effective date of this Order.

8. Any failure by Respondent to comply with the terms of this Order may result in issuance by the Executive Secretary of an order to show cause pursuant to NAC 639.965 directing Respondent to appear before the Board at the next regularly-scheduled meeting for a show cause hearing. If such a hearing results in a finding of a violation of this Order Respondent, the Board may impose additional discipline upon Respondent not inconsistent with the provisions of NRS Chapter 639.

9. General Counsel will present this Stipulation to the Board for approval pursuant to NRS 622.330 at the Board's regularly scheduled public meeting on October 14, 2020, in Las Vegas. Respondent will appear at the meeting to answer questions from the Board members and/or staff. The Board members may discuss and deliberate regarding this Stipulation, even if Respondent is not present at the meeting.

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

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

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

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

AGREED:

Signed this ____ day of October, 2020

Signed this ____ day of October, 2020

KATHERINE KUEHL, RPH,
Certificate of Registration No. 11172

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

DECISION AND ORDER

The Nevada State Board of Pharmacy hereby adopts the foregoing Stipulation as its decision as to Respondent Katherine Kuehl, R.Ph., Certificate of Registration No. 11172, in Case No. 19-035-RPH-B-S and hereby orders that the terms of the foregoing Stipulation be made effective upon execution below.

IT IS SO ORDERED.

Entered this ____ day of October, 2020.

Helen Park, President
Nevada State Board of Pharmacy

5B

JUL 30 2020

NEVADA STATE BOARD
OF PHARMACY**BEFORE THE NEVADA STATE BOARD OF PHARMACY****NEVADA STATE BOARD OF PHARMACY,****Petitioner,****v.****LILY AKANA, PT****Certificates of Registration Nos. PT07926,
TD01906 and TD01907****Respondent.****CASE NO. 19-075-PT-S****NOTICE OF INTENDED ACTION
AND ACCUSATION**

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

JURISDICTION

1. The Nevada State Board of Pharmacy ("Board") has jurisdiction over this matter because, at the time of the events alleged herein, Respondent Lily Akana ("Akana"), Certificate of Registration No. PT07926, was a pharmacy technician registered with the Board.

2. Akana subsequently registered with the Board as a dispensing technician trainee for two dispensing practitioners and was issued Certificates of Registration Nos. TD01906 and TD01907.

FACTUAL ALLEGATIONS

3. Akana was employed by Walgreens Pharmacy #2590 ("Walgreens"), located on 6435 North Aliante Parkway, North Las Vegas, Nevada 89084, until April 2019.

4. On or about April 25, 2019, Walgreens' Asset Protection Manager ("APM") Michael Lisi ("Lisi") in the course of investigating drug shortages at Walgreens interviewed Akana and discovered that Akana was diverting drugs from Walgreens.

5. A subsequent investigation by Walgreens' loss prevention staff identified a total of at least forty-two (42) tablets diverted by Akana from either valid prescriptions dispensed to patients or directly from Walgreens' inventory, consisting of the following controlled substances:

- 17 Oxycodone tablets
- 57 Percocet tablets
- 5 Carisoprodol/Soma tablets
- 2 Clonazepam tablets
- 1 bottle of Oxycodone

6. During the investigation, Akana admitted to the unlawful diversion activity.

7. Walgreens terminated Akana on April 25, 2019.

FIRST CAUSE OF ACTION

Unlawful Acquisition of Controlled Substances

8. NRS 453.331(1)(d) states, in relevant part, that "[i]t is unlawful for a person knowingly or intentionally to . . . [a]cquire or obtain . . . possession of a controlled substance . . . by misrepresentation, fraud, forgery, deception, subterfuge or alteration." 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. *See* NRS 639.210(12).

9. By diverting controlled substances as alleged herein, Akana violated, or attempted to violate, NRS 453.331(1)(d) and is subject to discipline pursuant to NRS 639.210(12).

SECOND CAUSE OF ACTION

Unlawful Possession of Controlled Substances

10. NRS 453.336(1) states, in relevant part, that "a person shall not knowingly or intentionally possess a controlled substance, unless the substance was obtained directly from, or pursuant to, a [lawful] prescription or order of a [practitioner]". Violating, attempting 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. *See* NRS 639.210(12).

11. By diverting controlled substances as alleged herein, Akana violated, or attempted to violate, NRS 453.336(1) and is subject to discipline pursuant to NRS 639.210(12).

THIRD CAUSE OF ACTION **Unprofessional Conduct - Diversion**

12. “Supplying or diverting drugs . . . which are legally sold in pharmacies . . . so that unqualified persons can circumvent any law pertaining to the legal sale of such articles” constitutes “unprofessional conduct and conduct contrary to the public interest.” NAC 639.945(1)(g). Conduct that is unprofessional or contrary to the public interest is grounds for suspension or revocation of any certificate, license or permit licensed by the Board. *See* NRS 639.210(4).

13. By diverting controlled substances as alleged herein, Akana engaged in unprofessional conduct and conduct contrary to the public interest pursuant to NAC 639.945(1)(g) and is subject to discipline pursuant to NRS 639.210(4).

FOURTH CAUSE OF ACTION **Unprofessional Conduct - Deceitful Practice**

14. “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). Conduct that is unprofessional or contrary to the public interest is grounds for suspension or revocation of any certificate, license or permit licensed by the Board. *See* NRS 639.210(4).

15. By diverting controlled substances as alleged herein, Akana was a party to a fraudulent or deceitful practice or transaction, 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).

FIFTH CAUSE OF ACTION**Violations of Federal Law**

16. 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. *See* NRS 639.210(11).

17. By diverting controlled substances as alleged herein, Akana violated, or attempted to violate, 21 U.S.C. § 841(a), 21 U.S.C. § 842(a), and 21 U.S. Code § 844, and is subject to discipline pursuant to NRS 639.210(11).

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

Signed this 30th day of July, 2020.



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

NOTICE TO RESPONDENT

You have the right to show the Nevada State Board of Pharmacy that your conduct, as alleged above, complies with all lawful requirements. NRS 233B.127(3). You have the right to a hearing before the Board to answer the Notice of Intended Action and Accusation and present evidence and argument on all issues involved, either personally or through counsel. NRS 233B.121; NRS 233B.127(3); NRS 622A.300(1) and (3); NRS 639.241. To do so, you must complete and file two (2) copies of the Answer and Notice of Defense served herewith, to be received by the Board's Reno office located at 985 Damonte Ranch Parkway – Suite 206, Reno, Nevada 89521, within twenty (20) days of your receipt of this Notice of Intended Action and Accusation. NRS 622A.320; NRS 639.243. Your failure to timely file an Answer and Notice of Defense constitutes an admission of the charges and waiver of the right to a hearing. NRS 639.244. If you fail to appear at the hearing and the Board finds that you were given sufficient legal notice of the hearing, the Board may accept the allegations as true and may proceed to consider the case and render a decision. NRS 622A.350.

BEFORE THE NEVADA STATE BOARD OF PHARMACY

NEVADA STATE BOARD OF PHARMACY,

Petitioner,

v.

**LILY AKANA, PT
Certificates of Registration Nos. PT07926,
TD01906 and TD01907**

Respondent.

CASE NO. 19-075-PT-S

**STATEMENT TO THE
RESPONDENT AND
NOTICE OF HEARING**

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

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

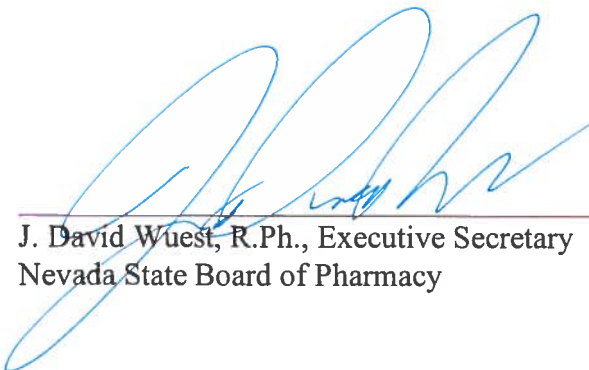
2. You have the right to show the Nevada State Board of Pharmacy that your conduct, as alleged above, complies with all lawful requirements. *See* NRS 233B.127(3). You have the right to a hearing before the Board to answer the Notice of Intended Action and Accusation and present evidence and argument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

3. **The Board has scheduled your hearing on this matter for Wednesday, September 2, 2020, at 9:00 a.m. or soon thereafter. The hearing will occur at the Hilton Garden Inn, 7830 S. Las Vegas Blvd., Las Vegas, Nevada.**

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

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

DATED this 30th day of July, 2020.



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

CERTIFICATE OF SERVICE

I certify that I am an employee of the Nevada State Board of Pharmacy, and that on this 31st day of July, 2020, I served a true and correct copy of the foregoing document by Certified U.S. Mail to the following:

Lily Akana, PT
5404 LEMHI CT
NORTH LAS VEGAS, NV 89031

Charles Goodwin, Esq.
2970 W. Sahara Avenue
Las Vegas, NV 89102



SHIRLEY HUNTING

FILED

AUG 10 2020

NEVADA STATE BOARD
OF PHARMACY

BEFORE THE NEVADA STATE BOARD OF PHARMACY

NEVADA STATE BOARD OF PHARMACY

Petitioner.

CASE NO.: 19-075-PT-S

v.

ANSWER TO NOTICE OF INTENDED
ACTION AND ACCUSATION

LILY AKANA, PT

Certificate of Registration No. PT07926,
TD01906 and TD01097

Respondent.

Lily Akana, PT, ("Ms. Akana"), by and through her counsel of record MURPHY JONES APC, in answer to the Notice of Intended Action and Accusation ("Accusation") filed in the above-entitled matter before the Nevada State Board of Pharmacy ("Board"), declares:

1. That her objection to the Notice of Intended Action and Accusation as being incomplete or failing to state clearly the charges against her, is hereby interposed on the following grounds:

None.

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

Ms. Akana has recently retained legal counsel who is conducting an independent investigation into the allegations espoused in the Accusation. Ms. Akana requests a hearing in the matter, on the merits of the case, and will provide additional information and produce relevant documentation after her legal counsel has been afforded the opportunity to adequately prepare a defense to the Accusation. With the afore referenced reservation, Ms. Akana admits and denies the allegations espoused in the Notice of Intended Action and Accusation as follows:

ANSWER

I - II.

Ms. Akana admits that the Board has jurisdiction over this matter.

II. - VII.

Ms. Akana is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in paragraph II-VII and therefore denies the same.

FIRST CAUSE OF ACTION

(Unlawful Acquisition of Controlled Substance)

Ms. Akana states that the allegations contained in paragraph VIII - IX contain legal conclusions therefore denies the same.

SECOND CAUSE OF ACTION

(Unlawful Possession of Controlled Substances)

Ms. Akana states that the allegations contained in paragraph X - XI contain legal conclusions therefore denies the same.

THIRD CAUSE OF ACTION

(Unprofessional Conduct - Diversion)

Ms. Akana states that the allegations contained in paragraph XII - XIII contain legal conclusions therefore denies the same.

FOURTH CAUSE OF ACTION

(Unprofessional Conduct - Deceitful Practice)

Ms. Akana states that the allegations contained in paragraph XIV - XV contain legal conclusions therefore denies the same.

FIFTH CAUSE OF ACTION

(Violations of Federal Law)

Ms. Akana states that the allegations contained in paragraph IV contain legal conclusions therefore denies the same.

ANSWER

AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE

1. Complainant fails to state a claim upon which relief can be granted.

SECOND AFFIRMATIVE DEFENSE

2. Complainant's causes of action are barred by applicable statute of limitations

THIRD AFFIRMATIVE DEFENSE

3. Complainant's causes of action are barred by the doctrine of unclean hands.

FOURTH AFFIRMATIVE DEFENSE

4. Complainant's causes of action are barred by the doctrine of laches.

FIFTH AFFIRMATIVE DEFENSE

5. Complainant's causes of action are barred by the doctrines of estoppel and/or waiver.

SIXTH AFFIRMATIVE DEFENSE

6. The facts not having been fully developed, Respondent further affirmatively pleads the following affirmative defenses as may be applicable in this action: accord and satisfaction, arbitration and award, assumption of risk, contributory negligence, discharge in bankruptcy, duress, estoppel, failure of consideration, fraud, illegality, injury by fellow servant, laches, license, payment, release, res judicata, statute of frauds, status of limitations, waiver, and any other matter constituting and avoidance or affirmative defense

DATED: August 10, 2020

By: 

Kevin C. Murphy, Esq.
Attorney for Respondent Lily Akana, PT

CERTIFICATE OF SERVICE

Case Name: **In the Matter of: Lily Akana, PT**

Agency Case No.: 19-075-PT-S

I declare:

I am employed in the law firm of MURPHY JONES APC, which is the office of a member of the Nevada State Bar, at which member's direction this service is made. I am 18 years of age or older and not a party to this matter.

On August 10, 2020, I served the attached **ANSWER** via **EMAIL SERVICE** to the following person(s):

Courtney K. Lee, General Counsel
Nevada State Board of Pharmacy
985 Damonte Ranch Pkwy, Suite 206
Reno, Nevada 89521
Email: c.lee@pharmacy.nv.gov

I declare under penalty of perjury under the laws of the State of Nevada the foregoing is true and correct, and that this declaration was executed on August 10, 2020, at San Diego, California.



Kevin C. Murphy, Esq.
Declarant

5C

FILED

SEP 11 2020

NEVADA STATE BOARD
OF PHARMACY**BEFORE THE NEVADA STATE BOARD OF PHARMACY****NEVADA STATE BOARD OF PHARMACY,****Petitioner,****v.****ASHLEY CARRIER, APRN,
Certificate of Registration No. CS27118,****Respondent.****CASE NO. 19-089-CS-S****FIRST AMENDED NOTICE OF
INTENDED ACTION
AND ACCUSATION**

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

JURISDICTION

1. The Nevada State Board of Pharmacy ("Board") has jurisdiction over this matter because, at the time of the events alleged herein, Respondent Ashley Carrier, APRN ("Carrier"), held a Nevada controlled substance registration, Certificate of Registration No. CS27118, issued by the Board.

FACTUAL ALLEGATIONS

2. On April 30, 2019, Nevada Highway Patrol Trooper Ruslan Shumlyakovskiy (Trooper Shumlyakovskiy) pulled Carrier's vehicle over and subsequently conducted a driving under the influence (DUI) investigation. The driver of the vehicle was Carrier.

3. In the front seat of Carrier's vehicle, Trooper Shumlyakovskiy observed a clear pill container. The contents of the pill container were identified by Nevada Poison Control as:

- 1 Xtampza (oxycodone) 13.5 mg capsule
- 5 Morphine Sulfate Extended Release 15 mg tablets
- 1 Morphine Sulfate 15 mg tablet
- 1 Alprazolam 2 mg tablet
- 77 Clonazepam 1 mg tablets

4. Carrier did not have a prescription for the controlled substances and was not able to explain to Trooper Shumlyakovskiy how she acquired the controlled substances. Additionally, Carrier did not respond to Board Staff's inquiries regarding the acquisition of the controlled substances.

5. Carrier was arrested for DUI and five counts of possession of controlled substances.

6. Carrier pled guilty to DUI and open alcohol container in vehicle. The controlled substance charges were dismissed.

7. On May 6, 2019, Carrier's Advanced Practice Registered Nurse (APRN) License No. APRN002874 with the Nevada State Board of Nursing (NSBN) was placed on inactive status pursuant to NRS632.341(3), which provides in pertinent part "the licensee may not practice nursing during the time the license is inactive."

8. Carrier wrote multiple prescriptions for controlled substances after May 6, 2019, when her NSBN License No. APRN002874 was inactive and she was prohibited from practicing.

9. On or about August 11, 2020, Board staff served Carrier with an order pursuant to NRS 639.2895(1) to immediately cease and desist prescribing controlled substances for Nevada patients.

10. On August 12, 2020, Carrier surrendered her DEA Certificate of Registration No. MC4737788 to the U.S. Drug Enforcement Administration by executing a DEA Form 104, entitled "Surrender for Cause" (DEA Surrender for Cause).

11. By executing the DEA Surrender for Cause, Carrier acknowledged in pertinent part the following:

In view of my alleged failure to comply with the Federal requirements pertaining to controlled substances or list 1 chemicals, and as an indication of my good faith in desiring to remedy any incorrect or unlawful practices on my part, I hereby surrender for cause my Drug Enforcement Administration (DEA) Certification of Registration.

12. On or about August 21, 2020, Board staff served Carrier with notice that her surrender of her DEA Certificate of Registration No. MC4737788 for cause operated as an immediate suspension of her Certificate of Registration No. CS27118 with the Board pursuant to NRS 639.2107.

13. Even after her APRN License No. APRN002874 was placed on inactive status, service of the cease and desist, surrender of her DEA Certificate of Registration No. MC4737788, and suspension of her Certificate of Registration No. CS27118, Carrier continues to represent herself as a licensed APRN as an employee/agent/affiliate of the Center for Wellness and the Good Samaritan, and to prescribe controlled substances, including, without limitation, alprazolam.

FIRST CAUSE OF ACTION

Unlawful Acquisition of Controlled Substances

14. NRS 453.331(1)(d) states, in relevant part, that “[i]t is unlawful for a person knowingly or intentionally to . . . [a]cquire or obtain . . . possession of a controlled substance . . . by misrepresentation, fraud, forgery, deception, subterfuge or alteration.”

15. By diverting controlled substances as alleged herein, Carrier violated, or attempted to violate, NRS 453.331(1)(d) and is subject to discipline pursuant to NRS 453.236(1) and/or NRS 639.210(12).

SECOND CAUSE OF ACTION

Unlawful Possession of Controlled Substances

16. NRS 453.336(1) states, in relevant part, that “a person shall not knowingly or intentionally possess a controlled substance, unless the substance was obtained directly from, or pursuant to, a [lawful] prescription or order of a [practitioner]”.

17. By diverting controlled substances as alleged herein, Carrier violated, or attempted to violate, NRS 453.336(1) and is subject to discipline pursuant to NRS 453.236(1) and/or NRS 639.210(12).

THIRD CAUSE OF ACTION
Unprofessional Conduct - Diversion

18. “Supplying or diverting drugs . . . which are legally sold in pharmacies . . . so that unqualified persons can circumvent any law pertaining to the legal sale of such articles” constitutes “unprofessional conduct and conduct contrary to the public interest.” NAC 639.945(1)(g).

19. By diverting controlled substances as alleged herein, Carrier engaged in unprofessional conduct and conduct contrary to the public interest pursuant to NAC 639.945(1)(g) and is subject to discipline pursuant to NRS 453.236(1) and/or NRS 639.210(4).

FOURTH CAUSE OF ACTION
Unprofessional Conduct – Diversion as Deceitful Practice

20. “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).

21. By diverting controlled substances as alleged herein, Carrier was a party to any fraudulent or deceitful practice or transaction, 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 453.236(1) and/or NRS 639.210(4).

FIFTH CAUSE OF ACTION
Violations of Federal Law - Diversion

22. Violating any provision of the Federal Food, Drug and Cosmetic Act or any other federal or state law or regulation relating to controlled substances is grounds for suspension or revocation of a controlled substances registration issued by the Board. NRS 453.236(1) and NRS 639.210(11).

23. By diverting controlled substances as alleged herein, Carrier violated, or attempted to violate, 21 U.S.C. § 841(a), 21 U.S.C. § 842(a), and 21 U.S.C. § 844, and is subject to discipline pursuant to NRS 453.236(1) and/or NRS 639.210(11).

SIXTH CAUSE OF ACTION
Unlawful Prescribing of Controlled Substances

24. It is unlawful for a practitioner to prescribe a controlled substance except as authorized by federal and state law. 21 U.S.C. § 822(a)(2); 21 U.S.C. § 823(f); 221 U.S.C. § 841(a); 21 U.S.C. § 842(a); 21 CFR § 1306.03; NRS 453.226(1); NRS 453.232; NRS 453.321(1)(a); NRS 639.100(1); NRS 639.235; NRS 639.2813(1). An advanced practice registered nurse may only prescribe controlled substances with authorization from both the Board and the NSBN. NRS 639.2351; NAC 639.850; NAC 639.854.

25. By prescribing controlled substances without holding an active APRN license with the NSBN, Carrier violated, or attempted to violate, 21 U.S.C. § 822(a)(2), 21 U.S.C. § 823(f), 221 U.S.C. § 841(a), 21 U.S.C. § 842(a), 21 CFR § 1306.03, NRS 453.226(1), NRS 453.232, NRS 453.321(1)(a), NRS 639.100(1), NRS 639.235, NRS 639.2351, NRS 639.2813(1), NAC 639.850, and NAC 639.854, and is subject to discipline pursuant to NRS 453.236(1) and/or NRS 639.210(11) and (12).

SEVENTH CAUSE OF ACTION
Unprofessional Conduct – Unlawful Prescribing

26. “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(1)(k).

27. By prescribing controlled substances without holding an active APRN license, Carrier engaged in unprofessional conduct and conduct contrary to the public interest pursuant to NAC 639.945(1)(k) and is subject to discipline pursuant to NRS 453.236(1) and/or NRS 639.210(4).

EIGHTH CAUSE OF ACTION

Unprofessional Conduct – Unlawful Prescribing as Deceitful Practice

28. Falsely representing oneself as a practitioner entitled to write prescriptions for controlled substances in this state is a felony offense. 21 U.S.C. § 841(a); 21 U.S.C. § 842(a); NRS 639.2813(1).

29. By falsely representing that she is licensed APRN entitled to write prescriptions for controlled substances in this state, Carrier was a party to any fraudulent or deceitful practice or transaction, 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 453.236(1) and/or NRS 639.210(4).

NINTH CAUSE OF ACTION

Commission of Acts that Render Registration Inconsistent with the Public Interest

30. By her actions as set forth herein, Carrier committed acts that render her registration to dispense controlled substances inconsistent with the public interest pursuant to NRS 453.231, and is subject to discipline pursuant to NRS 453.236(1) and NRS 453.241(1).

TENTH CAUSE OF ACTION

Surrender of DEA Registration for Cause

31. By surrendering her DEA Certificate of Registration No. MC4737788 for cause, Carrier has admitted to failing to comply with the Federal requirements pertaining to controlled substances, has committed an act that would render her registration to dispense controlled substances inconsistent with the public interest, is no longer authorized by federal law to dispense controlled substances, and is subject to discipline pursuant to NRS 453.236(1) and NRS 453.241(1).

32. By surrendering her DEA Certificate of Registration No. MC4737788 for cause, the suspension of Carrier's Certificate of Registration No. CS27118 pursuant to NRS 639.2107 is subject to review by the Board pursuant to NRS 453.236(1) and NRS 639.255(1)(c).

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

Signed this 11th day of September, 2020.



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

NOTICE TO RESPONDENT

You have the right to show the Nevada State Board of Pharmacy that your conduct, as alleged above, complies with all lawful requirements. NRS 233B.127(3). You have the right to a hearing before the Board to answer the Notice of Intended Action and Accusation and present evidence and argument on all issues involved, either personally or through counsel. NRS 233B.121; NRS 233B.127(3); NRS 622A.300(1) and (3); NRS 639.241. To do so, you must complete and file two (2) copies of the Answer and Notice of Defense served herewith, to be received by the Board's Reno office located at 985 Damonte Ranch Parkway – Suite 206, Reno, Nevada 89521, within twenty (20) days of your receipt of this Notice of Intended Action and Accusation. NRS 622A.320; NRS 639.243. Your failure to timely file an Answer and Notice of Defense constitutes an admission of the charges and waiver of the right to a hearing. NRS 639.244. If you fail to appear at the hearing and the Board finds that you were given sufficient legal notice of the hearing, the Board may accept the allegations as true and may proceed to consider the case and render a decision. NRS 622A.350.

BEFORE THE NEVADA STATE BOARD OF PHARMACY

NEVADA STATE BOARD OF PHARMACY,	)	CASE NO. 19-089-CS-S
)	
Petitioner,)	
v.)	
)	
ASHLEY CARRIER, APRN	)	STATEMENT TO THE
Certificate of Registration No. CS27118,	)	RESPONDENT
	)	AND NOTICE OF HEARING
	/	
Respondent.		

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

I.

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

II.

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

III.

PLEASE NOTE CHANGE IN HEARING DATE

The Board has scheduled your hearing on this matter for Wednesday, October 14, 2020, at 9:00 a.m. or soon thereafter. Pursuant to Governor Steve Sisolak's Emergency Directive 006, there will be no physical location for this meeting. The meeting can be listened to or viewed live over Zoom.

Via Videoconference at Zoom: <https://zoom.us/j/5886256671>

or

Via Teleconference at 1 (669) 900-6833

Meeting ID: 588 625 6671

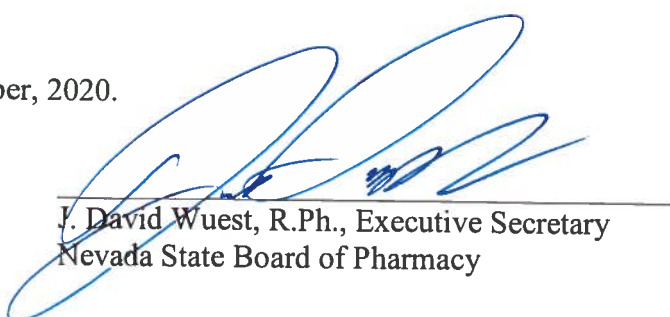
IV.

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

V.

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

DATED this 11th day of September, 2020.



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

BEFORE THE NEVADA STATE BOARD OF PHARMACY

NEVADA STATE BOARD OF PHARMACY,)	CASE NO. 19-089-CS-S
)	
Petitioner,	)	ANSWER AND NOTICE
v.	)	OF DEFENSE
)	
ASHLEY CARRIER, APRN)	
Certificate of Registration No. CS27118,)	
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.

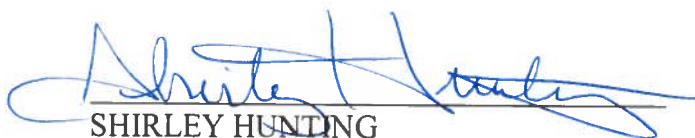
DATED this ____ day of _____, 2020.

ASHLEY CARRIER, APRN

CERTIFICATE OF SERVICE

I certify that I am an employee of the Nevada State Board of Pharmacy, and that on this 11th day of September, 2020, I served a true and correct copy of the foregoing document by Certified U.S. Mail to the following:

Ashley Carrier, APRN
5327 Caprock Canyon Ave.
Las Vegas, NV 89139



SHIRLEY HUNTING

5D

FILED**JUL 23 2020****NEVADA STATE BOARD
OF PHARMACY****BEFORE THE NEVADA STATE BOARD OF PHARMACY****NEVADA STATE BOARD OF PHARMACY,****Petitioner,****v.****THEODORE HERRERA,
Certificate of Registration No. IN04741,****Respondent.****CASE NO. 19-079-IN-S****NOTICE OF INTENDED ACTION
AND ACCUSATION**

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

JURISDICTION

1. The Nevada State Board of Pharmacy ("Board") has jurisdiction over this matter because, at the time of the events alleged herein, Respondent Theodore Herrera ("Herrera"), Certificate of Registration No. IN04741, was a pharmacy intern registered with the Board.

FACTUAL ALLEGATIONS

2. Respondent Herrera was employed by Walgreens Pharmacy #5311, located on 1180 East Flamingo Road, Las Vegas, Nevada 89119, from approximately June 2018 to April 2019.

3. On or about April 19, 2019, Walgreens' Asset Protection Manager ("APM") Michael Lisi ("Lisi") was contacted by APM Serge Ahmad concerning a customer who reported a prescription for Oxycodone 15 mg was missing two (2) tablets, filled on April 18, 2019.

4. A subsequent investigation by Walgreens' loss prevention staff identified a total of at least sixty-six (66) tablets sold and diverted between June 2018 and April 2019 by Respondent Herrera. The valid prescriptions to other patients, from which Herrera diverted a portion, consisted of the following controlled substances:

- 20 Alprazolam 1mg tablets
- 10 Alprazolam 2mg tablets
- 6 Oxycodone 10mg tablets
- 10 Oxycodone 15mg tablets
- 20 Oxycodone 30mg tablets

5. During the investigation, Herrera admitted to the unlawful diversion activity.

6. Walgreens terminated Herrera on April 23, 2019.

FIRST CAUSE OF ACTION

Unlawful Acquisition of Controlled Substances

7. NRS 453.331(1)(d) states, in relevant part, that “[i]t is unlawful for a person knowingly or intentionally to . . . [a]cquire or obtain . . . possession of a controlled substance . . . by misrepresentation, fraud, forgery, deception, subterfuge or alteration.” 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. *See* NRS 639.210(12).

8. By diverting controlled substances as alleged herein, Respondent Herrera violated, or attempted to violate, NRS 453.331(1)(d) and is subject to discipline pursuant to NRS 639.210(12).

SECOND CAUSE OF ACTION

Unlawful Possession of Controlled Substances

9. NRS 453.336(1) states, in relevant part, that “a person shall not knowingly or intentionally possess a controlled substance, unless the substance was obtained directly from, or pursuant to, a [lawful] prescription or order of a [practitioner]”. 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. *See* NRS 639.210(12).

10. By diverting controlled substances as alleged herein, Respondent Herrera violated, or attempted to violate, NRS 453.336(1) and is subject to discipline pursuant to NRS 639.210(12).

THIRD CAUSE OF ACTION **Unprofessional Conduct - Diversion**

11. “Supplying or diverting drugs . . . which are legally sold in pharmacies . . . so that unqualified persons can circumvent any law pertaining to the legal sale of such articles” constitutes “unprofessional conduct and conduct contrary to the public interest.” NAC 639.945(1)(g). Conduct that is unprofessional or contrary to the public interest is grounds for suspension or revocation of any certificate, license or permit licensed by the Board. *See* NRS 639.210(4).

12. By diverting controlled substances as alleged herein, Respondent Herrera engaged in unprofessional conduct and conduct contrary to the public interest pursuant to NAC 639.945(1)(g) and is subject to discipline pursuant to NRS 639.210(4).

FOURTH CAUSE OF ACTION **Unprofessional Conduct - Deceitful Practice**

13. “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). Conduct that is unprofessional or contrary to the public interest is grounds for suspension or revocation of any certificate, license or permit licensed by the Board. *See* NRS 639.210(4).

14. By diverting controlled substances as alleged herein, Respondent Herrera was a party to any fraudulent or deceitful practice or transaction, 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).

FIFTH CAUSE OF ACTION

Violations of Federal Law

15. 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. *See* NRS 639.210(11).

16. By diverting controlled substances as alleged herein, Respondent Herrera violated, or attempted to violate, 21 U.S.C. § 841(a), 21 U.S.C. § 842(a), and 21 U.S. Code § 844, and is subject to discipline pursuant to NRS 639.210(11).

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

Signed this 23rd day of July, 2020.



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

NOTICE TO RESPONDENT

You have the right to show the Nevada State Board of Pharmacy that your conduct, as alleged above, complies with all lawful requirements. NRS 233B.127(3). You have the right to a hearing before the Board to answer the Notice of Intended Action and Accusation and present evidence and argument on all issues involved, either personally or through counsel. NRS 233B.121; NRS 233B.127(3); NRS 622A.300(1) and (3); NRS 639.241. To do so, you must complete and file two (2) copies of the Answer and Notice of Defense served herewith, to be received by the Board's Reno office located at 985 Damonte Ranch Parkway – Suite 206, Reno, Nevada 89521, within twenty (20) days of your receipt of this Notice of Intended Action and Accusation. NRS 622A.320; NRS 639.243. Your failure to timely file an Answer and Notice of Defense constitutes an admission of the charges and waiver of the right to a hearing. NRS 639.244. If you fail to appear at the hearing and the Board finds that you were given sufficient legal notice of the hearing, the Board may accept the allegations as true and may proceed to consider the case and render a decision. NRS 622A.350.

BEFORE THE NEVADA STATE BOARD OF PHARMACY

NEVADA STATE BOARD OF PHARMACY,

Petitioner,

v.

THEODORE HERRERA,
Certificate of Registration No. IN04741,

Respondent.

CASE NO. 19-079-IN-S

**STATEMENT TO THE
RESPONDENT AND
NOTICE OF HEARING**

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

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

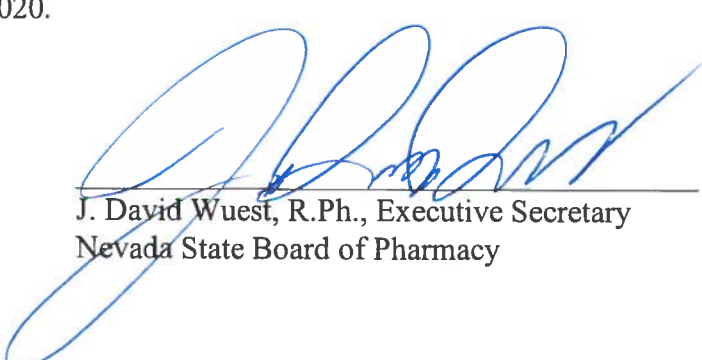
2. You have the right to show the Nevada State Board of Pharmacy that your conduct, as alleged above, complies with all lawful requirements. *See* NRS 233B.127(3). You have the right to a hearing before the Board to answer the Notice of Intended Action and Accusation and present evidence and argument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

3. **The Board has scheduled your hearing on this matter for Wednesday, September 2, 2020, at 9:00 a.m. or soon thereafter. The hearing will occur at the Hilton Garden Inn, 7830 S. Las Vegas Blvd., Las Vegas, Nevada.**

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

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

DATED this 23rd day of July, 2020.



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

CERTIFICATE OF SERVICE

I certify that I am an employee of the Nevada State Board of Pharmacy, and that on this 24th day of July, 2020, I served a true and correct copy of the foregoing document by Certified U.S. Mail to the following:

Theodore Herrera
2362 N. Green Valley Pkwy #P-236
Henderson, NV 89014



SHIRLEY HUNTING

RETURN OF SERVICE

STATE OF Nevada)
)
 COUNTY OF Washoe)
)
 ss.

I HEREBY certify and return that I received the within Nevada State Board of Pharmacy Notice of Intended Action and Accusation, Statement to the Respondent and Notice of Hearing, and Answer and Notice of Defense in Case 19-079-IN-S on the 29th day of July, 2020 and that I personally served the same upon Theodore Herrera, a person at least eighteen years of age, at 10559 Crystal Bay Drive, Reno, NV 89521 on the 29th day of July, 2020.

[Signature]
 Signature

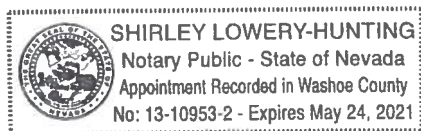
Joseph J. Depczynski
 Name (print)

SUBSCRIBED AND SIGNED before me

this 29th day of JULY, 2020

by JOSEPH DEPCZYNSKI.

SHIRLEY LOWERY-HUNTING
 NOTARY PUBLIC



FILED**SEP 18 2020**NEVADA STATE BOARD
OF PHARMACY

Charles C. Diaz (NV Bar 3349)
Diaz & Galt, LLC.
443 Marsh Avenue
Reno, Nevada 89509
T: 775.324.6443
E: cdiaz@diazgaltlaw.com
Attorney for Plaintiff

BEFORE THE NEVADA STATE BOARD OF PHARMACY

NEVADA STATE BOARD OF PHARMACY

CASE NO. 19 -079-IN-S

Petitioner,

v.

THEODORE HERRERA,
Certificate of Registration No. IN04741

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

Respondent.

Theodore Herrera, Respondent herein, by and through his attorney, Charles D. Diaz of Diaz & Galt, LLC, hereby makes the following answer to Notice of Intended Action and Accusation.

JURISDICTION

(1) Paragraph 1.- Mr. Herrera admits the allegations contained in paragraph 1.

FACTUAL ALLEGATIONS

(2) Paragraph 2.- Mr. Herrera admits that he worked at Walgreens Pharmacy #5311 located on 1180 East Flamingo Road, Las Vegas, Nevada during the months of June 2018 to April 2019 but denies the inference that he worked more than part time. Mr. Herrera was attending pharmacy school during the relevant time period. His schedule at the above referenced Walgreens Pharmacy was limited to sometimes only once a month and he did not consistently work more than one or two days a week. Mr. Herrera denies the inference that

1 this period of time was the extent of his work at this location because based on information
2 and belief Mr. Herrera worked at this Walgreens location, part time from August 2017 when
3 Pharmacy school started until April 2019, first as a pharmacy technician and then as a
4 pharmacy intern.

5
6 (3) Paragraph 3.- Mr. Herrera is without knowledge or information sufficient to form a
7 belief as to the truth of the averment stated in Paragraph 3.

8
9 (4) Paragraph 4.- Mr. Herrera admits that for several months prior to April 2019 he
10 diverted a portion of valid prescriptions to other patients (approximately tablets, and as set
11 forth in paragraph 4, but denies that he engaged in this conduct during the entire period of his
12 employment.

13
14 (5) Paragraph 5. - Mr. Herrera admits that, during the investigation of this matter, he
15 admitted to this unlawful diversion activity.

16
17 (6) Paragraph 6.- Mr. Herrera admits this averment.

18
19 **FIRST CAUSE OF ACTION**
Unlawful Acquisition of Controlled Substances

20 (7) Paragraph 7.- Mr. Herrera agrees with and admits the law as outlined in this
21 paragraph.

22 (8) Paragraph 8.- Mr. Herrera admits to diverting controlled substances amounting to
23 approximately 66 tablets and admits that this behavior is subject to discipline under NRS
24 639.210(4), but is without the experience and training to form a legal conclusion.

25
26 //

27 //

28 //

SECOND CAUSE OF ACTION
Unlawful Possession of Controlled Substances

(9) Paragraph 9.- Mr. Herrera agrees with and admits the law as outlined in this paragraph.

(10) Paragraph 10.- Mr. Herrera admits to diverting controlled substances amounting to approximately 66 tablets and admits that this behavior is subject to discipline under NRS 639.210(4), but is without the experience and training to form a legal conclusion.

THIRD CAUSE OF ACTION
Unprofessional Conduct-Diversion

(11) Paragraph 11.- Mr. Herrera agrees with and admits the law as outlined in this paragraph.

(12) Paragraph 12.- Mr. Herrera admits to diverting controlled substances amounting to approximately 66 tablets and admits that unprofessional conduct and conduct contrary to the public interest is subject to discipline but is without the experience and training to form a legal conclusion.

FOURTH CAUSE OF ACTION
Unprofessional Conduct-Deceitful Practice

(13) Paragraph 13.- Mr. Herrera agrees with and admits the law as outlined in this paragraph.

(14) Paragraph 14.- Mr. Herrera admits to diverting controlled substances amounting to approximately 66 tablets and admits that unprofessional conduct and conduct contrary to the public interest is subject to discipline but is without the experience and training to form a legal conclusion.

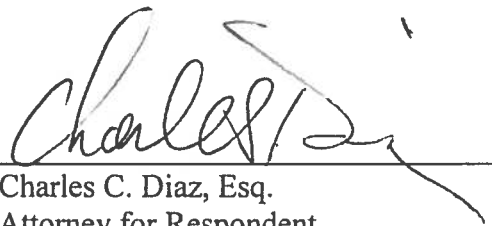
FIFTH CAUSE OF ACTION
Violations of Federal Law

(15) Paragraph 15.- Mr. Herrera agrees with and admits the law as outlined in this paragraph.

(16) Paragraph 16.- Mr. Herrera admits that he diverted controlled substances amounting to approximately 66 tablets and admits he is subject to discipline.

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

DIAZ & GALT, LLC.

By 
Charles C. Diaz, Esq.
Attorney for Respondent

5E

JUL 30 2020

NEVADA STATE BOARD
OF PHARMACY

BEFORE THE NEVADA STATE BOARD OF PHARMACY

NEVADA STATE BOARD OF PHARMACY,

Petitioner,

v.

JERALD CLYDE, RPH,
Certificate of Registration No. 10310, andSMITH'S PHARMACY #366,
License No. PH01771,

Respondents.

CASE NOS. 19-061-RPH-S
19-061-PH-SNOTICE OF INTENDED ACTION
AND ACCUSATION

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

JURISDICTION

1. The Nevada State Board of Pharmacy (Board) has jurisdiction over this matter because at the time of the events alleged herein, Respondent Jerald Clyde (Clyde), Certificate of Registration No. 10310, was a pharmacist registered with the Board, and Respondent Smith's Pharmacy #366, License No. PH01771, was a pharmacy licensed by the Board.

FACTUAL ALLEGATIONS

2. Clyde was employed by Smith's #366 at the time of the events alleged herein.
3. On June 21, 2018, L.V.'s physician electronically transmitted a prescription to Smith's Pharmacy #348 for Dexilantⁱ 60 mg. delayed release capsule, quantity 90, for a 90-day supply. The prescription allowed for three (3) refills.
4. Smith's Pharmacy #348 computer system designated the prescription as no. 6759964.
5. Smith's Pharmacy #348 dispensed the initial fill of 30 Dexilant 60 mg. capsules on June 22, 2018, and dispensed a refill on July 30, 2018.

ⁱ Dexilant is a proton pump inhibitor used to treat heartburn and gastroesophageal reflux disease (GERD).

6. On September 28, 2018, Smith's Pharmacy #348 electronically transferred prescription no. 6759964 to Smith's Pharmacy #366.
7. Smith's Pharmacy #366 computer system designated the transferred prescription as no. 6027081.
8. Smith's Pharmacy #366 refilled and dispensed 30 capsules of Dexilant 60 mg. on September 28, 2018, and again on October 31, 2018.
9. On November 30, 2018, pharmaceutical technician Daniel Saucedo processed a refill of prescription no. 6027081.
10. Clyde filled the prescription. During the filling process, Clyde inadvertently selected a bottle of *Duloxetine*ⁱⁱ 60 mg. capsules rather than the *Dexilant* 60 mg. capsules as prescribed.
11. Clyde is on record as the verifying pharmacist for prescription no. 6027081. He failed to detect the medication error when he performed the final product review.
12. L.V. experienced headaches and ophthalmological issues after ingesting seven (7) doses of the mis-filled medication over a three-day period. L.V. checked the medication bottle and discovered the error.

FIRST CAUSE OF ACTION

(Respondent Clyde)

13. Unprofessional conduct includes the failure by a licensee to follow strictly the instructions of a practitioner when filling, labeling, and dispensing a prescription. NAC 639.945(1)(d). It also includes a licensee performing his or her duties in an "incompetent, unskillful, or negligent manner." NAC 639.945(1)(i). Additionally, NAC 639.252 states in relevant part:

If a pharmaceutical technician performs one or more of the functions necessary to prepare a prescription, *the pharmacist supervising the pharmaceutical technician* is responsible for the filled prescription, including, but not limited to, verifying:

- (a) The selection and strength of the drug;
- (b) The dosage form; and
- (c) The labeling of the prescription.

ⁱⁱ **Duloxetine** is a selective serotonin and norepinephrine reuptake inhibitor antidepressant used to treat major depressive disorder.

NAC 639.252(2) (emphasis added.)

14. Respondent Clyde violated NAC 639.252(2) and engaged in unprofessional conduct in violation of NAC 639.945(1)(d) and (i) when he verified the scanned data and final product on prescription no. 6027081 as accurate when it was not, which resulted in Smith's dispensing *Duloxetine* 60 mg. capsules rather than the *Dexilant* 60 mg. capsules as prescribed. Clyde is therefore subject to discipline pursuant to NRS 639.210(4) and (12).

SECOND CAUSE OF ACTION
(Respondent Smith's Pharmacy #366)

15. NRS 639.230(5) provides: "Any violation of any of the provisions of this chapter [NRS Chapter 639] by a managing pharmacist or by personnel of the pharmacy under the supervision of the managing pharmacist is cause for the suspension or revocation of the license of the pharmacy by the Board." Additionally, "[t]he owner of a pharmacy, the managing pharmacist of the pharmacy and the registered pharmacist on duty at the pharmacy are responsible for the acts and omissions of pharmaceutical technicians and other personnel who are not pharmacists working in or for the pharmacy, including, but not limited to, any errors committed or unauthorized work performed by such personnel, if the owner, managing pharmacist or registered pharmacist knew or reasonably should have known of the act or omission." NAC 639.702. Further, the owner of any business or facility licensed, certified or registered by the Board is responsible for the acts of all personnel in his or her employ. NAC 639.945(2).

16. As the pharmacy/pharmacy owner at which the violations of law alleged herein occurred, Smith's Pharmacy #366 is responsible for any violations of law by Clyde pursuant to NRS 639.230(5), NAC 639.702 and NAC 639.945(2).

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 30th day of July, 2020.



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

NOTICE TO RESPONDENT

You have the right to show the Nevada State Board of Pharmacy that your conduct, as alleged above, complies with all lawful requirements. NRS 233B.127(3). You have the right to a hearing before the Board to answer the Notice of Intended Action and Accusation and present evidence and argument on all issues involved, either personally or through counsel. NRS 233B.121; NRS 233B.127(3); NRS 622A.300(1) and (3); NRS 639.241. To do so, you must complete and file two (2) copies of the Answer and Notice of Defense served herewith, to be received by the Board's Reno office located at 985 Damonte Ranch Parkway – Suite 206, Reno, Nevada 89521, within twenty (20) days of your receipt of this Notice of Intended Action and Accusation. NRS 622A.320; NRS 639.243. Your failure to timely file an Answer and Notice of Defense constitutes an admission of the charges and waiver of the right to a hearing. NRS 639.244. If you fail to appear at the hearing and the Board finds that you were given sufficient legal notice of the hearing, the Board may accept the allegations as true and may proceed to consider the case and render a decision. NRS 622A.350.

BEFORE THE NEVADA STATE BOARD OF PHARMACY

NEVADA STATE BOARD OF PHARMACY,

CASE NOS. 19-061-RPH-S

Petitioner,

v.

JERALD CLYDE, RPH
Certificate of Registration No. 10310,

Respondent.

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

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

I.

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

II.

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

III.

The Board has scheduled your hearing on this matter for Wednesday, September 2, 2020, at 9:00 a.m. or soon thereafter. The hearing will occur at the Hilton Garden Inn, 7830 S. Las Vegas Blvd., Las Vegas, Nevada.

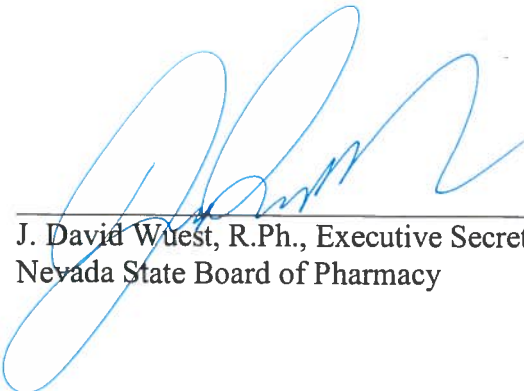
IV.

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

V.

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

DATED this 30th day of July, 2020.



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

CERTIFICATE OF SERVICE

I certify that I am an employee of the Nevada State Board of Pharmacy, and that on this 31st day of July, 2020, I served a true and correct copy of the foregoing document by Certified U.S. Mail to the following:

Jerald Clyde, R.Ph.
2378 Goldfire Circle
Henderson, NV 89052

Smith's Pharmacy #366
55 South Valle Verde Drive
Henderson, NV 89012



SHIRLEY HUNTING

FILED**AUG 24 2020****NEVADA STATE BOARD
OF PHARMACY****BEFORE THE NEVADA STATE BOARD OF PHARMACY****NEVADA STATE BOARD OF
PHARMACY,****PETITIONER,****v.****JERALD CLYDE, RPH
Certificate of Registration No. 10310, and****SMITH'S PHARMACY #366, License No.
PH01771,****RESPONDENTS.****CASE NO. 19-061-PH-S****ANSWER AND NOTICE OF DEFENSE**

Respondents 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, jointly declare:

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

None

2. That, in answer to the Notice of Intended Action and Accusations, Respondents jointly admit, deny and allege as follows:

Respondents are currently investigating these allegations. At this time, Respondents deny the allegations.

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 25th day of August, 2020.

Roger N. Morris

TYPE OR PRINT NAME



AUTHORIZED REPRESENTATIVE FOR
SMITH'S PHARMACY #366 AND
JERALD CLYDE

5F

BEFORE THE NEVADA STATE BOARD OF PHARMACY

NEVADA STATE BOARD OF PHARMACY,

CASE NOS. 19-061-PH-S

Petitioner,

v.

SMITH'S PHARMACY #366

License No. PH01771,

Respondent.

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

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

I.

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

II.

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

III.

The Board has scheduled your hearing on this matter for Wednesday, September 2, 2020, at 9:00 a.m. or soon thereafter. The hearing will occur at the Hilton Garden Inn, 7830 S. Las Vegas Blvd., Las Vegas, Nevada.

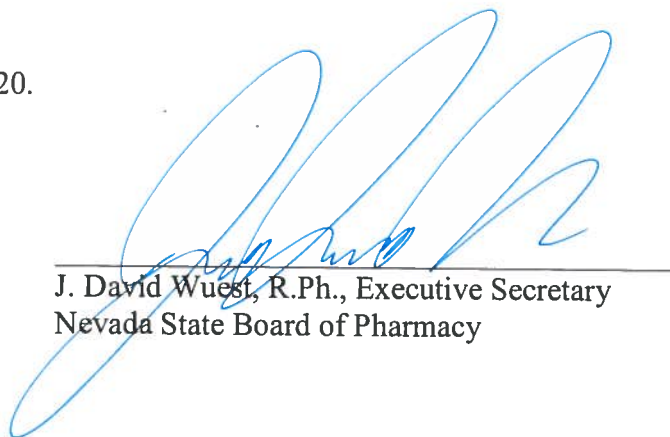
IV.

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

V.

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

DATED this 30th day of July, 2020.



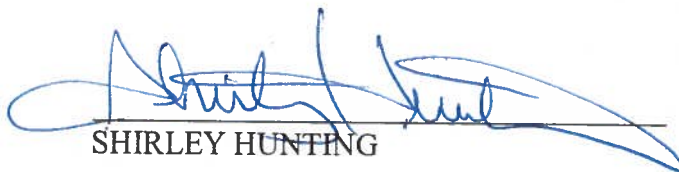
J. David Wuest, R.Ph., Executive Secretary
Nevada State Board of Pharmacy

CERTIFICATE OF SERVICE

I certify that I am an employee of the Nevada State Board of Pharmacy, and that on this 31st day of July, 2020, I served a true and correct copy of the foregoing document by Certified U.S. Mail to the following:

Jerald Clyde, R.Ph.
2378 Goldfire Circle
Henderson, NV 89052

Smith's Pharmacy #366
55 South Valle Verde Drive
Henderson, NV 89012



SHIRLEY HUNTING

FILED

AUG 25 2020

NEVADA STATE BOARD
OF PHARMACY**BEFORE THE NEVADA STATE BOARD OF PHARMACY****NEVADA STATE BOARD OF
PHARMACY,****PETITIONER,****v.****JERALD CLYDE, RPH
Certificate of Registration No. 10310, and****SMITH'S PHARMACY #366, License No.
PH01771,****RESPONDENTS.****CASE NO. 19-061-PH-S****ANSWER AND NOTICE OF DEFENSE**

Respondents 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, jointly declare:

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

None

2. That, in answer to the Notice of Intended Action and Accusations, Respondents jointly admit, deny and allege as follows:

Respondents are currently investigating these allegations. At this time, Respondents deny the allegations.

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 25th day of August, 2020.

Roger N. Morris

TYPE OR PRINT NAME



AUTHORIZED REPRESENTATIVE FOR
SMITH'S PHARMACY #366 AND
JERALD CLYDE

BEFORE THE NEVADA STATE BOARD OF PHARMACY

NEVADA STATE BOARD OF PHARMACY,

Petitioner,

v.

**JERALD CLYDE, RPH,
Certificate of Registration No. 10310, and**

**SMITH'S PHARMACY #366,
License No. PH01771,**

Respondents.

**CASE NOS. 19-061-RPH-S
19-061-PH-S**

STIPULATION AND ORDER

Brett Kandt, General Counsel for Petitioner the Nevada State Board of Pharmacy (Board), Respondent Jerald Clyde, R.Ph., Certificate of Registration No. 10310 (Clyde), and Respondent Smith's Pharmacy #366, License No. PH01771, by and through counsel, Nick Meza, Esq., **HEREBY**

STIPULATE AND AGREE THAT:

1. The Board has jurisdiction over Respondents and this matter.
2. On or about July 30, 2020, Board Staff properly served Respondents with the Notice of Intended Action and Accusation (Accusation) on file in this matter together with the Statement to Respondent and Notice of Hearing.
3. On or about August 25, 2020, Respondents jointly filed an Answer and Notice of Defense to the Accusation.
4. Respondents are fully aware of the right to seek the advice of counsel in this matter and obtained the advice of counsel prior to entering into this Stipulation.
5. Respondents are aware of the right to a hearing on the matters alleged in the Accusation, the right to reconsideration, the right to appeal and any and all other rights which may be accorded to Respondents pursuant to NRS Chapter 233B (Nevada Administrative Procedure Act), NRS Chapter 622A (Administrative Procedure Before Certain Regulatory Bodies), and NRS Chapter 639 (Nevada Pharmacy Act).

6. Conditioned on the acceptance of this Stipulation by the Board, and with the exception of the right to challenge any determination that Respondents have failed to comply with the provisions of Paragraphs 9, 10, 15 and 16 below, Respondents hereby freely and voluntarily waive the rights to a hearing, reconsideration, appeal and any and all other rights related to this action that may be accorded by NRS Chapter 233B (Nevada Administrative Procedure Act), NRS Chapter 622A (Administrative Procedure Before Certain Regulatory Bodies), and NRS Chapter 639 (Nevada Pharmacy Act).

7. Respondents do not admit to the allegations in the Accusation, but acknowledge that, if proven at a contested administrative hearing, Board staff prosecuting this case could establish a factual basis for the violations alleged therein, to wit, that:

A. Clyde violated NAC 639.252(2) and engaged in unprofessional conduct in violation of NAC 639.945(1)(d) and (i) when he verified the scanned data and final product on prescription no. 6027081 as accurate when it was not, which resulted in Smith's dispensing *Duloxetine* 60 mg. capsules rather than the *Dexilant* 60 mg. capsules as prescribed. Clyde is therefore subject to discipline pursuant to NRS 639.210(4) and (12).

B. As the pharmacy/pharmacy owner at which the violations of law alleged herein occurred, Smith's Pharmacy #366 is responsible for any violations of law by Clyde pursuant to NRS 639.230(5), NAC 639.702 and NAC 639.945(2).

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

9. In order to resolve this matter without incurring any further costs or the expense associated with a hearing, the Board and Clyde stipulate to the following penalties. Respondent Jerald Clyde, R.Ph., Certificate of Registration No. 10310, shall:

A. Accept this Stipulation and Order as a public reprimand regarding his duties and responsibilities as a registered pharmacist;

B. Pay a fine of One-Thousand Dollars (\$1,000.00) for the alleged violations; and

C. Pay One-Thousand Dollars (\$1,000.00) to partially reimburse the Board for recoverable attorney's fees and costs incurred in investigating and prosecuting this matter.

10. In order to resolve this matter without incurring any further costs or the expense associated with a hearing, the Board and Smith's Pharmacy #366 stipulate to the following penalties. Respondent Smith's Pharmacy #366, License No. PH01771, shall:

A. Pay a fine of One-Thousand Dollars (\$1,000.00) for the alleged violations;
and

B. Pay One-Thousand Dollars (\$1,000.00) to partially reimburse the Board for recoverable attorney's fees and costs incurred in investigating and prosecuting this matter.

11. Any failure by any Respondent to comply with the terms of this Order may result in issuance by the Executive Secretary of an order to show cause pursuant to NAC 639.965 directing that Respondent to appear before the Board at the next regularly-scheduled meeting for a show cause hearing. If such a hearing results in a finding of a violation of this Order by that Respondent, the Board may impose additional discipline upon that Respondent not inconsistent with the provisions of NRS Chapter 639.

12. General Counsel will present this Stipulation to the Board for approval pursuant to NRS 622.330 at the Board's regularly scheduled public meeting on October 14, 2020. Respondents and/or their authorized representative(s) will appear telephonically or via Zoom at the meeting to answer questions from the Board Members and/or Board Staff. The Board Members and Staff may discuss and deliberate regarding this Stipulation, even if Respondents are not present at the meeting.

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

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

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

16. Upon approval of this Stipulation by the Board, Respondents shall pay the attorney's fees and costs agreed to herein by cashier's check or certified check or money order made payable to "Nevada State Board of Pharmacy," to be received by the Board's Reno office located at 985 Damonte Ranch Parkway – Suite 206, Reno, Nevada 89521, within thirty (30) of the effective date of this Order.

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

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

AGREED:

Signed this ____ day of October, 2020

Signed this ____ day of October, 2020

**JERALD CLYDE, RPH,
Certificate of Registration No. 10310**

Signed this ____ day of October, 2020

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

**SMITH'S PHARMACY #366,
License No. PH01771**

**APPROVED AS TO FORM AND
CONTENT this ____ day of October, 2020**

**Nick Meza
Counsel for Respondents**

DECISION AND ORDER

The Nevada State Board of Pharmacy hereby adopts the foregoing Stipulation as its decision as to Respondent Jerald Clyde, R.Ph., Certificate of Registration No. 10310, and Respondent Smith's Pharmacy #366, License No. PH01771, in Case No. 19-061, and hereby orders that the terms of the foregoing Stipulation be made effective upon execution below.

IT IS SO ORDERED.

Entered this ____ day of October, 2020.

Helen Park, President
Nevada State Board of Pharmacy

5G

JUL 24 2020

NEVADA STATE BOARD
OF PHARMACY

BEFORE THE NEVADA STATE BOARD OF PHARMACY

NEVADA STATE BOARD OF PHARMACY,

Petitioner,

v.

ABDEL M. KHALEK, MD,
Certificate of Registration Nos. CS19745 and
PD00722,

ROBERT CHANCELLOR, MD,
Certificate of Registration Nos. CS22616 and
PD27416, and

LINDSAY HOFFMAN, PA-C,
Certificate of Registration Nos. CS18262 and
PD00177,

Respondents.

Case Nos. 19-003-CS-A-S
19-003-CS-B-S
19-003-CS-C-S

NOTICE OF INTENDED ACTION
AND ACCUSATION

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

JURISDICTION

1. The Nevada State Board of Pharmacy (Board) has jurisdiction over this matter because at the time of the events alleged herein, Respondent Abdel M. Khalek, MD (Khalek), held a controlled substance registration, Certificate of Registration No. CS19745, and dispensing practitioner registration, Certificate of Registration No. PD00722; Respondent Robert Chancellor, MD (Chancellor), held a controlled substance registration, Certificate of Registration No. CS22616, and dispensing practitioner registration, Certificate of Registration No. PD27416; and Lindsay Hoffman, PA-C (Hoffman), held a controlled substance registration, Certificate of Registration No. CS18262, and dispensing practitioner registration, Certificate of Registration No. PD00177, all issued by the Board.

FACTUAL ALLEGATIONS

2. Vinay Kumar Bararia, MD (Bararia) was not registered with the Board at the time of the events alleged herein.

3. Bararia voluntarily surrendered his license to practice medicine, License No. 11355, to the Nevada State Board of Medical Examiners (NSBME) on March 8, 2013, and was sentenced in federal court for distribution of controlled substances in September 2014.

4. Bararia has owned and operated Nevada Health Services, LLC aka Trimcare (Trimcare), located at 5375 South Fort Apache Road, Suites 102 and 103, in Las Vegas, since August 2018.

5. Khalek co-owned and/or was employed at Trimcare from October 2018 to April 2019.

6. Chancellor co-owned and/or was employed by Trimcare from November 2018 to the present.

7. Hoffman was employed by Trimcare from August 2018 to present.

8. Ageless Aesthetics (Ageless Aesthetics), an unnamed third party, is a medical spa that operates at 5375 South Fort Apache Road, Suite 101, Las Vegas, Nevada 89148, next door to Trimcare, for which Khalek was the medical director from approximately October 2018 to April 2019.

9. Investigators from the Board, the Nevada State Board of Medical Examiners (BME) and the Drug Enforcement Administration (DEA) conducted a joint investigation of Trimcare and found evidence of misconduct and violations involving the unlawful possession, administration, prescribing and dispensing of controlled substances and/or dangerous drugs.

10. Khalek, Chancellor and Hoffman permitted Bararia, who was not a licensed practitioner, in the course of operating Trimcare to purchase, access, store, possess, administer, furnish, prescribe and/or dispense controlled substances and dangerous drugs under another

practitioner's name, without that practitioner having a bona fide therapeutic relationship with any such patient or the practitioner being present at the time the prescription was dispensed, and/or otherwise falsely represent himself as a practitioner entitled to write prescriptions in this state.

11. Khalek unlawfully prescribed controlled substances and/or dangerous drugs, including, without limitation, Testosterone, Phentermine, Phendimetrazine, Topamax, Botox, and Juvederm, for at least two-hundred ninety-eight (298) patients with whom he did not have a bona fide therapeutic relationship from September 2018 to April 2019 by pre-signing prescriptions, providing his log-on information to e-scribing systems to Bararia, and/or failing to secure his secondary authenticator for e-scribing CII medications.

12. Chancellor unlawfully prescribed controlled substances and/or dangerous drugs, including, without limitation, Adderall, Phentermine, and Topamax, for at least ten (10) patients with whom he did not have a bona fide therapeutic relationship from November 2018 to present by pre-signing prescriptions, his log-on information to e-scribing systems to Bararia, and/or failing to secure his secondary authenticator for e-scribing CII medications.

13. Hoffman unlawfully prescribed controlled substances/dangerous drugs, including, but not limited to, Phentermine, and Topamax for at least two (2) patients with whom she did not have a bona fide therapeutic relationship in April 2019 by pre-signing prescriptions.

14. Khalek, Chancellor and Hoffman permitted access of their inventory of controlled substances and dangerous drugs to unlicensed employees of Trimcare and/or Ageless Aesthetics.

15. Khalek, Chancellor and Hoffman failed to issue a written prescription for each medication dispensed, failed to verify medications for accuracy prior to dispensing, failed to maintain complete, accurate and readily retrievable records of all controlled substances and dangerous drugs purchased and dispensed, failed to inventory controlled substances at least once every two (2) years, failed to properly store and maintain the inventory, failed to maintain the

security of the inventory from unauthorized access, and failed to segregate and/or dispose of adulterated and/or expired dangerous drugs.

16. Chancellor and Hoffman had possession of pre-drawn, unlabeled syringes containing an unidentified dangerous drug.

17. On or about July 7, 2020, Board staff served Bararia with an order pursuant to NRS 639.2895(1) to immediately cease and desist possessing, administering, prescribing and/or dispensing controlled substances and dangerous drugs for Nevada patients from Trimcare.

APPLICABLE LAW

18. No person other than a practitioner holding a license to practice his or her profession in this State may prescribe or write a prescription. NRS 639.235(1).

19. A prescription for a controlled substance may be issued only for a legitimate medical purpose and in the usual course of his or her professional practice by an individual practitioner who holds a DEA registration and is authorized to prescribe controlled substances by the jurisdiction in which he is licensed to practice his profession. 21 U.S.C. § 822(a)(2); 21 U.S.C. § 823(f); 21 CFR § 1306.03(a)(1); NRS 453.381(1).

20. It is unlawful for a practitioner to prescribe or dispense a controlled substance or dangerous drug except as authorized by law. NRS 453.226(1); NRS 453.321(1)(a); NRS 454.215; NRS 454.301, NRS 639.100(1); NRS 639.23505; NAC 453.410; NAC 639.742; NAC 639.745.

21. It is unlawful for a person to purchase, possess, administer or furnish a dangerous drug except as authorized by law. NRS 454.213(1); NRS 454.221; NRS 454.311; NRS 454.316; NRS 454.321 and/or NRS 454.356.

22. It is a felony offense to falsify a prescription for a controlled substance or otherwise purchase or possess a controlled substance except as authorized by law. 21 U.S.C. § 841(a); 21 U.S.C. § 842(a); NRS 453.331(1)(c), (d), (f), (h) and (i).

23. Falsely representing oneself as a practitioner entitled to write prescriptions in this state is a felony offense. 21 U.S.C. § 841(a); 21 U.S.C. § 842(a); NRS 639.281(1); NRS 639.2813(1).

24. Conspiring to violate the Controlled Substances Act is a felony offense. 21 U.S.C. § 846; NRS 453.401(1)(a).

25. A dispensing practitioner must issue a written prescription for each medication dispensed, verify medications for accuracy prior to dispensing, maintain complete, accurate and readily retrievable records of all controlled substances and dangerous drugs purchased and dispensed, inventory controlled substances at least once every two (2) years, properly store and maintain the inventory, maintain the security of the inventory from unauthorized access, and segregate and/or dispose of adulterated and/or expired dangerous drugs. NRS 453.246; NRS 585.370; NRS 585.420; NRS 639.282; NAC 453.400; NAC 453.410; NAC 453.475; NAC 454.040; NAC 639.475; NAC 639.476; NAC 639.510; NAC 639.601; NAC 639.742, NAC 639.743; NAC 639.745; 21 U.S.C. § 842(a)(5); 21 CFR 1304.11; 21 CFR 1304.21.

26. Performing or in any way being a party to any fraudulent or deceitful practice or transaction constitutes unprofessional conduct or conduct contrary to the public interest pursuant to NAC 639.945(1)(h) and is grounds for suspension or revocation of any license or registration issued by the Board. NRS 639.210(4).

27. Performing any duties as the holder of a controlled substance registration or a dispensing practitioner registration in an incompetent, unskillful or negligent manner constitutes unprofessional conduct or conduct contrary to the public interest pursuant to NAC 639.945(1)(i) and is grounds for suspension or revocation of any license or registration issued by the Board. NRS 639.210(4).

28. Aiding or abetting a person not licensed to practice pharmacy in the State of Nevada constitutes unprofessional conduct or conduct contrary to the public interest pursuant to

NAC 639.945(1)(j) and is grounds for suspension or revocation of any license or registration issued by the Board. NRS 639.210(4).

29. Dispensing a drug as a dispensing practitioner or prescribing a drug as a prescribing practitioner to a patient with whom the practitioner does not have a bona fide therapeutic relationship constitutes unprofessional conduct or conduct contrary to the public interest pursuant to NAC 639.945(1)(n) and (o) and is grounds for suspension or revocation of any license or registration issued by the Board. NRS 639.210(4).

30. 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 or registration issued by the Board. NRS 639.210(11).

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

32. 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).

FIRST CAUSE OF ACTION

Unprofessional Conduct – Party to a Fraudulent/Deceitful Practice/Transaction

33. By permitting Bararia, who was not a licensed practitioner, in the course of operating Trimcare to purchase, access, store, possess, administer, furnish, prescribe and/or dispense controlled substances and dangerous drugs under another practitioner's name, without that practitioner having a bona fide therapeutic relationship with any such patient or the practitioner being present at the time the prescription was dispensed, and/or otherwise falsely represent himself as a practitioner entitled to write prescriptions in this state, including pre-

signing prescriptions, providing log-on information to e-scribing systems to Bararia, and failing to secure secondary authenticator for e-scribing CII medications, Khalek, Chancellor and Hoffman were party to a fraudulent or deceitful practice or transaction and engaged in unprofessional conduct and conduct contrary to the public interest in violation of NAC 639.945(1)(h), and are subject to discipline pursuant to NRS 453.236(1) and NRS 639.210(4).

SECOND CAUSE OF ACTION

Unprofessional Conduct – Incompetent, Unskillful or Negligent Performance of Duties

34. By permitting Bararia, who was not a licensed practitioner, in the course of operating Trimcare to purchase, access, store, possess, administer, furnish, prescribe and/or dispense controlled substances and dangerous drugs under another practitioner's name, without that practitioner having a bona fide therapeutic relationship with any such patient or the practitioner being present at the time the prescription was dispensed, and/or otherwise falsely represent himself as a practitioner entitled to write prescriptions in this state, including pre-signing prescriptions, providing log-on information to e-scribing systems to Bararia, and failing to secure secondary authenticator for e-scribing CII medications, Khalek, Chancellor and Hoffman performed their duties as the holders of controlled substance registrations and dispensing practitioner registrations in an incompetent, unskillful or negligent manner and engaged in unprofessional conduct and conduct contrary to the public interest in violation of NAC 639.945(1)(i), and are subject to discipline pursuant to NRS 453.236(1) and NRS 639.210(4).

THIRD CAUSE OF ACTION

Unprofessional Conduct – Aiding and Abetting Unlicensed Practice

35. By permitting Bararia, who was not a licensed practitioner, in the course of operating Trimcare to purchase, access, store, possess, administer, furnish, prescribe and/or dispense controlled substances and dangerous drugs under another practitioner's name, without that practitioner having a bona fide therapeutic relationship with any such patient or the

practitioner being present at the time the prescription was dispensed, and/or otherwise falsely represent himself as a practitioner entitled to write prescriptions in this state, including pre-signing prescriptions, providing log-on information to e-scribing systems to Bararia, and failing to secure secondary authenticator for e-scribing CII medications, Khalek, Chancellor and Hoffman 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 in violation of NAC 639.945(1)(j), and are subject to discipline pursuant to NRS 453.236(1) and NRS 639.210(4).

FOURTH CAUSE OF ACTION

Unprofessional Conduct – Prescribing/Dispensing Without Bona Fide Therapeutic Relationship

36. By unlawfully prescribing and dispensing controlled substances to patients with whom they did not have a bona fide therapeutic relationship, Khalek, Chancellor and Hoffman engaged in unprofessional conduct and conduct contrary to the public interest in violation of NAC 639.945(1)(n) and (o), and are subject to discipline pursuant to NRS 453.236(1) and NRS 639.210(4).

FIFTH CAUSE OF ACTION

Violations of Federal Controlled Substances Act

37. By permitting Bararia, who was not a licensed practitioner, in the course of operating Trimcare to purchase, access, store, possess, administer, furnish, prescribe and/or dispense controlled substances and dangerous drugs under another practitioner's name, without that practitioner having a bona fide therapeutic relationship with any such patient or the practitioner being present at the time the prescription was dispensed, and/or otherwise falsely represent himself as a practitioner entitled to write prescriptions in this state, including pre-signing prescriptions, providing log-on information to e-scribing systems to Bararia, and failing to secure secondary authenticator for e-scribing CII medications, Khalek, Chancellor and

Hoffman violated, attempted to violate, assisted or abetted in the violation of or conspired to violate 21 U.S.C. § 822(a)(2), 21 U.S.C. § 823(f), 21 U.S.C. § 841(a), 21 U.S.C. § 842(a), 21 U.S.C. § 846 and 21 CFR §§ 1306.03–1306.05, and are subject to discipline pursuant to NRS 453.236(1) and NRS 639.210(11).

SIXTH CAUSE OF ACTION

Violations of State Law for Unlicensed Practice

38. By permitting Bararia, who was not a licensed practitioner, in the course of operating Trimcare to purchase, access, store, possess, administer, furnish, prescribe and/or dispense controlled substances and dangerous drugs under another practitioner's name, without that practitioner having a bona fide therapeutic relationship with any such patient or the practitioner being present at the time the prescription was dispensed, and/or otherwise falsely represent himself as a practitioner entitled to write prescriptions in this state, including pre-signing prescriptions, providing log-on information to e-scribing systems to Bararia, and failing to secure secondary authenticator for e-scribing CII medications, Khalek, Chancellor and Hoffman violated, attempted to violate, assisted or abetted in the violation of or conspired to violate, or knowingly permitted, allowed, condoned or failed to report a violation of NRS 453.226, NRS 453.316, NRS 453.321(1)(a), NRS 453.331 (1)(c)(d)(f)&(i), NRS 453.381(1), NRS 453.401(l)(a), NRS 454.213, NRS 454.215, NRS 454.221, NRS 454.311, NRS 454.316, NRS 454.321, NRS 639.100(1), NRS 639.235, NRS 639.23505, NRS 639.281, NRS 639.2813 and NRS 639.310, and are subject to discipline pursuant to NRS 453.236(1) and NRS 639.210(12).

SEVENTH CAUSE OF ACTION

Failure to Maintain Security of Controlled Substances or Dangerous Drugs

39. By failing to maintain proper locked security of their inventory of controlled substances and dangerous drugs and/or permitting unauthorized access to their inventory by Bararia and/or other unlicensed employees of Trimcare and/or Ageless Aesthetics, Khalek,

Chancellor and Hoffman violated NAC 453.400, NAC 453.410(1)(d), NAC 454.040, NAC 639.742(3)(c), NAC 639.742(3)(a)(b)(c)&(e), and NAC 639.745(1)(c), and are subject to discipline pursuant to NRS 453.236(1) and NRS 639.210(12).

EIGHTH CAUSE OF ACTION

Failure to Maintain Records for Controlled Substances Dispensed

40. By failing to keep complete, accurate, and readily retrievable records of all controlled substances dispensed, including failing to issue a written prescription for each medication dispensed and failing to inform the patient that he or she may request a written prescription to have it filled at another location of their choice, Khalek, Chancellor, and Hoffman violated NRS 453.246, NAC 453.410(1)(a)(B) and (2), NAC 639.745(2) and (3)(b)(2), 21 U.S.C. § 842(a)(5), 21 CFR 1304.11 and 21 CFR § 1304.21, and are subject to discipline pursuant to NRS 453.236(1) and NRS 639.210(11), (12) and (17).

NINTH CAUSE OF ACTION

Failure to Verify Dispensed Medications for Accuracy

41. By failing to verify medications for accuracy prior to dispensing, Khalek, Chancellor, and Hoffman violated NAC 639.743(2)(a) and (b), and are subject to discipline pursuant to NRS 453.236(1) and NRS 639.210(12).

TENTH CAUSE OF ACTION

Failure to Inventory Controlled Substances Every Two Years

42. By failing to inventory controlled substances at least once every two (2) years, Khalek, Chancellor, and Hoffman violated NRS 453.246, NAC 453.475(1)(b), 21 U.S.C. § 842(a)(5), 21 CFR 1304.11 and 21 CFR § 1304.21 and are subject to discipline pursuant to NRS 453.236(1) and NRS 639.210(11), (12) and (17).

ELEVENTH CAUSE OF ACTION

Failure to Properly Segregate/Dispose Adulterated/Expired Drugs

43. By failing to properly segregate and/or dispose of adulterated and/or expired dangerous drugs for administration, Khalek, Chancellor, and Hoffman violated NRS 585.370(1), NRS 639.282(1)(d), NAC 639.050(2), NAC 639.473(1) and (3), NAC 639.510(3) and NAC 639.601(1), and are subject to discipline pursuant to NRS 453.236(1) and NRS 639.210(12).

TWELFTH CAUSE OF ACTION

Failure to Properly Label Pre-Filled Syringes Against

44. By pre-filling syringes without proper labels and/or temperature control, Chancellor and Hoffman violated NRS 585.420, NRS 639.282 (1)(e), NAC 639.476 and NAC 639.510, and are subject to discipline pursuant to NRS 453.236(1) and NRS 639.210 (12).

THIRTEENTH CAUSE OF ACTION

Commission of Acts that Render Registration Inconsistent with the Public Interest

45. By their actions as set forth herein, Khalek, Chancellor and Hoffman have committed acts that render their registrations to prescribe or otherwise dispense a controlled substance inconsistent with the public interest pursuant to NRS 453.231, and are 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.

DATED this 24th day of July, 2020.



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

NOTICE TO RESPONDENT

You have the right to show the Nevada State Board of Pharmacy that your conduct, as alleged above, complies with all lawful requirements. NRS 233B.127(3). You have the right to a hearing before the Board to answer the Notice of Intended Action and Accusation and present evidence and argument on all issues involved, either personally or through counsel. NRS 233B.121; NRS 233B.127(3); NRS 622A.300(1) and (3); NRS 639.241. To do so, you must complete and file two (2) copies of the Answer and Notice of Defense served herewith, to be received by the Board's Reno office located at 985 Damonte Ranch Parkway – Suite 206, Reno, Nevada 89521, within twenty (20) days of your receipt of this Notice of Intended Action and Accusation. NRS 622A.320; NRS 639.243. Your failure to timely file an Answer and Notice of Defense constitutes an admission of the charges and waiver of the right to a hearing. NRS 639.244. If you fail to appear at the hearing and the Board finds that you were given sufficient legal notice of the hearing, the Board may accept the allegations as true and may proceed to consider the case and render a decision. NRS 622A.350.

BEFORE THE NEVADA STATE BOARD OF PHARMACY

NEVADA STATE BOARD OF PHARMACY,

CASE NO. 19-003-CS-A-S

Petitioner,

v.

**ABDEL M. KHALEK, MD,
Certificate of Registration Nos. CS19745 and
PD00722,**

**STATEMENT TO
THE RESPONDENT
AND NOTICE OF HEARING**

Respondent.

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

I.

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

II.

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

III.

The Board has scheduled your hearing on this matter for Wednesday, September 2, 2020, at 9:00 a.m. or soon thereafter. The hearing will occur at the Hilton Garden Inn, 7830 S. Las Vegas Blvd., Las Vegas, Nevada.

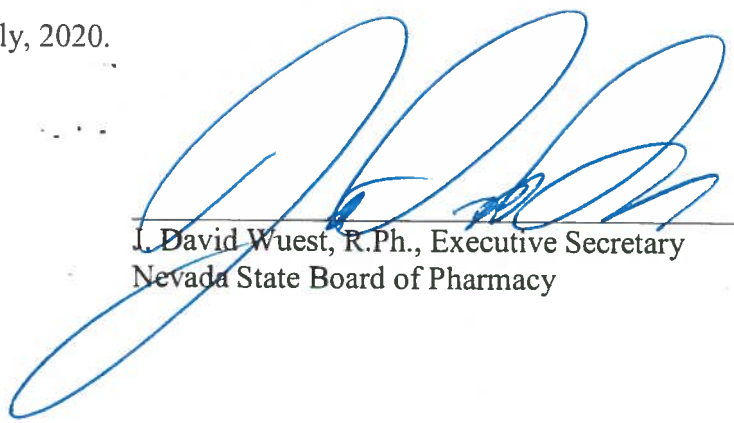
IV.

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

V.

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

DATED this 24th day of July, 2020.



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

CERTIFICATE OF SERVICE

I certify that I am an employee of the Nevada State Board of Pharmacy, and that on this 24th day of July, 2020, I served a true and correct copy of the foregoing document by Certified U.S. Mail to the following:

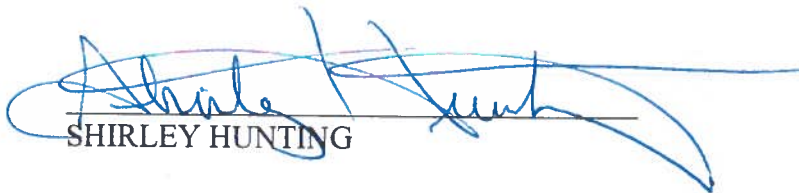
Abdel Khalek, MD
5375 S Ft Apache Rd #102-103
Las Vegas, NV 89148

Robert Chancellor, MD
7975 W Sahara Ave #104
Las Vegas, NV 89117

Lindsay Hoffman, PA-C
5375 S FT Apache Rd #102-103
Las Vegas, NV 89148

Jill Chase, Esq.
Lewis Brisbois
6385 S. Rainbow Blvd., Ste. 600
Las Vegas, NV 89118

E. Brent Bryson, Esq.
7730 W. Sahara Ave., Ste. 109
Las Vegas, NV 89117




SHIRLEY HUNTING

CERTIFICATE OF SERVICE

I certify that I am an employee of the Nevada State Board of Pharmacy, and that on this 4th day of August, 2020, I served a true and correct copy of the foregoing document by Certified U.S.

Mail to the following:

Abdel M. Khalek, MD
8600 Starboard Avenue
Las Vegas, NV 89117


Shirley Hunting

FILED

AUG 23 2020

NEVADA STATE BOARD
OF PHARMACY

LEWIS BRISBOIS BISGAARD & SMITH LLP
JILL M. CHASE
Nevada Bar No. 5250
6385 S. Rainbow Boulevard, Suite 600
Las Vegas, Nevada 89118
Telephone: 702.893.3383
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Attorney for Abdel M. Khalek, M.D.

BEFORE THE NEVADA STATE BOARD OF PHARMACY

NEVADA STATE BOARD OF
PHARMACY,

CASE NO. 19-090-CS-S

ANSWER AND NOTICE OF DEFENSE

Petitioner,

vs.

ABDEL M. KHALEK, M.D.,
Certificate of Registration No. CS19745
and PD00722

Respondent.

ABDEL M. KHALEK, M.D., ("Dr. Khalek"), by and through his counsel, JILL M. CHASE, ESQ. of the law firm of LEWIS BRISBOIS BISGAARD & SMITH, LLP hereby submits his Answer and Notice of Defense.

JURISDICTION

1. Answering Paragraph 1, Respondent objects to this paragraph as it calls for a legal conclusion; notwithstanding, Respondent admits that he held a Board-issued controlled substance registration, Certificate of Registration No. CS19745 and PD00722.

FACTUAL ALLEGATIONS

2. Answering Paragraph 2, Respondent admits that Vinay Kumar Bararia, M.D. was not registered with the Board at the time of the alleged events herein.

3. Answering Paragraph 3, Respondent is without sufficient knowledge, information upon which to base a belief as to the truth or falsity of the allegations contained in Paragraph III and therefore denies these allegations.

4. Answering Paragraph 4, Respondent is without sufficient knowledge,

1 information upon which to base a belief as to the truth or falsity of the allegations
2 contained in Paragraph 4 and therefore denies these allegations. .

3 5. Answering Paragraph 5, Respondent admits he was employed at Trimcare
4 from October 2018 to April 2019.

5 6. Answering Paragraph 6, Respondent is without sufficient knowledge,
6 information upon which to base a belief as to the truth or falsity of the allegations
7 contained in Paragraph 6 and therefore denies these allegations.

8 7. Answering Paragraph 7, Respondent is without sufficient knowledge,
9 information upon which to base a belief as to the truth or falsity of the allegations
10 contained in Paragraph 7 and therefore denies these allegations.

11 8. Answering Paragraph 8, Respondent denies that he was the medical
12 director of Ageless Aesthetics from October 2018 to April 2019.

13 9. Answering Paragraph 9, Respondent is without sufficient knowledge,
14 information upon which to base a belief as to the truth or falsity of the allegations
15 contained in Paragraph 9 and therefore denies these allegations.

16 10. Answering Paragraph 10, Respondent denies these allegations as to this
17 Respondent, but is without sufficient knowledge, information upon which to base a belief
18 as to the truth or falsity of the remaining allegations contained in Paragraph 10 and
19 therefore denies these allegations.

20 11. Answering Paragraph 11, Respondent denies these allegations.

21 12. Answering Paragraph 12, Respondent is without sufficient knowledge,
22 information upon which to base a belief as to the truth or falsity of the allegations
23 contained in Paragraph 12 and therefore denies these allegations.

24 13. Answering Paragraph 13, this allegation is not directed to this Respondent
25 is without sufficient knowledge, information upon which to base a belief as to the truth or
26 falsity of the allegations contained in Paragraph 13 and therefore denies these
27 allegations.

28 14. Answering Paragraph 14, Respondent denies these allegations as to this

1 Respondent, but is without sufficient knowledge, information upon which to base a belief
2 as to the truth or falsity of the remaining allegations contained in Paragraph 14 and
3 therefore denies these allegations.

4 15. Answering Paragraph 15, Respondent denies these allegations as to this
5 Respondent, but is without sufficient knowledge, information upon which to base a belief
6 as to the truth or falsity of the remaining allegations contained in Paragraph 15 and
7 therefore denies these allegations.

8 16. Answering Paragraph 16, Respondent is without sufficient knowledge,
9 information upon which to base a belief as to the truth or falsity of the allegations
10 contained in Paragraph 16 and therefore denies these allegations.

11 17. Answering Paragraph 17, Respondent is without sufficient knowledge,
12 information upon which to base a belief as to the truth or falsity of the allegations
13 contained in Paragraph 17 and therefore denies these allegations

14 APPLICABLE LAW

15 18. Answering Paragraph 18, Respondent objects to this paragraph as it calls
16 for a legal conclusion, for which no response is required.

17 19. Answering Paragraph 19, Respondent objects to this paragraph as it calls
18 for a legal conclusion, for which no response is required.

19 20. Answering Paragraph 20, Respondent objects to this paragraph as it calls
20 for a legal conclusion, for which no response is required.

21 21. Answering Paragraph 21, Respondent objects to this paragraph as it calls
22 for a legal conclusion, for which no response is required.

23 22. Answering Paragraph 22, Respondent objects to this paragraph as it calls
24 for a legal conclusion, for which no response is required.

25 23. Answering Paragraph 23, Respondent objects to this paragraph as it calls
26 for a legal conclusion, for which no response is required.

27 24. Answering Paragraph 24, Respondent objects to this paragraph as it calls
28 for a legal conclusion, for which no response is required.

26. Answering Paragraph 26, Respondent objects to this paragraph as it calls for a legal conclusion, for which no response is required.

27. Answering Paragraph 27, Respondent objects to this paragraph as it calls for a legal conclusion, for which no response is required.

28. Answering Paragraph 28, Respondent objects to this paragraph as it calls for a legal conclusion, for which no response is required.

29. Answering Paragraph 29, Respondent objects to this paragraph as it calls for a legal conclusion, for which no response is required.

30. Answering Paragraph 30, Respondent objects to this paragraph as it calls for a legal conclusion, for which no response is required.

31. Answering Paragraph 31, Respondent objects to this paragraph as it calls for a legal conclusion, for which no response is required.

32. Answering Paragraph 32, Respondent objects to this paragraph as it calls for a legal conclusion, for which no response is required.

FIRST CAUSE OF ACTION

Unprofessional Conduct-Party to a Fraudulent/Deceitful Practice/Transaction

33. Answering Paragraph 33, Respondent denies that he permitted Bararia to perform any unlawful acts alleged in Paragraph 33, but is without sufficient knowledge, information upon which to base a belief as to the truth or falsity of the allegations contained in Paragraph 33 as to the remaining Respondents and therefore denies these allegations.

SECOND CAUSE OF ACTION

Unprofessional Conduct-Incompetent, Unskillful or Negligent Performance of Duties

34. Answering Paragraph 34, Respondent denies that he permitted Bararia to perform any unlawful acts alleged in Paragraph 34, but is without sufficient knowledge, information upon which to base a belief as to the truth or falsity of the allegations

1 contained in Paragraph 34 as to the remaining Respondents and therefore denies these
2 allegations.

3 THIRD CAUSE OF ACTION

4 Unprofessional Conduct-Aiding and Abetting Unlicensed Practice

5 35. Answering Paragraph 35, Respondent denies that he permitted Bararia to
6 perform any unlawful acts alleged in Paragraph 35, but is without sufficient knowledge,
7 information upon which to base a belief as to the truth or falsity of the allegations
8 contained in Paragraph 35 as to the remaining Respondents and therefore denies these
9 allegations.

10 FOURTH CAUSE OF ACTION

11 Unprofessional Conduct-Prescribing/Dispensing Without Bona Fide Therapeutic 12 Relationship

13 36. Answering Paragraph 36, Respondent denies that he performed any
14 unlawful acts alleged in Paragraph 36, but is without sufficient knowledge, information
15 upon which to base a belief as to the truth or falsity of the allegations contained in
16 Paragraph 36 as to the remaining Respondents and therefore denies these allegations.

17 FIFTH CAUSE OF ACTION

18 Violations of Federal Controlled Substances Act

19 37. Answering Paragraph 37, Respondent denies that he permitted Bararia to
20 perform any unlawful acts alleged in Paragraph 37, but is without sufficient knowledge,
21 information upon which to base a belief as to the truth or falsity of the allegations
22 contained in Paragraph 37 as to the remaining Respondents and therefore denies these
23 allegations.

24 ///

25 ///

26 ///

27 ///

28 ///

SIXTH CAUSE OF ACTION

Violations of State Law for Unlicensed Practice

38. Answering Paragraph 38, Respondent denies that he permitted Bararia to perform any unlawful acts alleged in Paragraph 38, but is without sufficient knowledge, information upon which to base a belief as to the truth or falsity of the allegations contained in Paragraph 38 as to the remaining Respondents and therefore denies these allegations.

SEVENTH CAUSE OF ACTION

Failure to Maintain Security of Controlled Substances or Dangerous Drugs

39. Answering Paragraph 39, Respondent denies that he permitted Bararia and/or other unlicensed employees of Trimcare and/or Ageless Aesthetics to perform any unlawful acts alleged in Paragraph 39, but is without sufficient knowledge, information upon which to base a belief as to the truth or falsity of the allegations contained in Paragraph 39 as to the remaining Respondents and therefore denies these allegations.

EIGHTH CAUSE OF ACTION

Failure to Maintain Records for Controlled Substances Dispensed

40. Answering Paragraph 40, Respondent denies that he performed or committed any of the unlawful acts alleged in Paragraph 40, but is without sufficient knowledge, information upon which to base a belief as to the truth or falsity of the allegations contained in Paragraph 40 as to the remaining Respondents and therefore denies these allegations.

NINTH CAUSE OF ACTION

Failure to Verify Dispensed Medications for Accuracy

41. Answering Paragraph 41, Respondent denies that he performed any unlawful acts alleged in Paragraph 41, but is without sufficient knowledge, information upon which to base a belief as to the truth or falsity of the allegations contained in Paragraph 41 as to the remaining Respondents and therefore denies these allegations.

///

TENTH CAUSE OF ACTION

Failure to Inventory Controlled Substances Every Two Years

42. Answering Paragraph 42, Respondent denies that he performed any unlawful acts alleged in Paragraph 42, but is without sufficient knowledge, information upon which to base a belief as to the truth or falsity of the allegations contained in Paragraph 42 as to the remaining Respondents and therefore denies these allegations.

ELEVENTH CAUSE OF ACTION

Failure to Properly Segregate/Dispose Adulterated/Expired Drugs

43. Answering Paragraph 43, Respondent denies that he performed or committed any of the unlawful acts alleged in Paragraph 43, but is without sufficient knowledge, information upon which to base a belief as to the truth or falsity of the allegations contained in Paragraph 43 as to the remaining Respondents and therefore denies these allegations.

TWELFTH CAUSE OF ACTION

Failure to Properly Label Pre-Filled Syringes Against

44. Answering Paragraph 44, Respondent states that this allegation seeks information about other Respondents for which he is without sufficient knowledge, information upon which to base a belief as to the truth or falsity of the allegations contained in Paragraph 44 as to the remaining Respondents and therefore denies these allegations.

THIRTEENTH CAUSE OF ACTION

Commission of Acts that Render Registration Inconsistent with the Public Interest

45. Answering Paragraph 45, Respondent denies this paragraph as to himself, but is without sufficient knowledge, information upon which to base a belief as to the truth or falsity of the allegations contained in Paragraph 45 as to the remaining Respondents and therefore denies these allegations.

///

///

1 AFFIRMATIVE DEFENSES

2 FIRST AFFIRMATIVE DEFENSE

3 The Board's Complaint fails to state a claim on which relief may be granted.

4 SECOND AFFIRMATIVE DEFENSE

5 The Board's Complaint, and each cause of action therein, is barred by the doctrine
6 of laches, estoppel, and the doctrine of unclean hands.

7 THIRD AFFIRMATIVE DEFENSE

8 Respondent denies each and every allegation of the Board's Complaint not
9 specifically admitted or otherwise pled to herein.

10 WHEREFORE, Respondent prays for judgment as follows:

11 1. That all charges against him be dismissed;

12 2. For such other and further relief as may be deemed just and proper in these
13 premises.

14 DATED: August 28, 2020

Respectfully submitted,

15 Jill M. Chase
16 LEWIS BRISBOIS BISGAARD & SMITH LLP

17 /s/ Jill M. Chase

18 By: _____
19 Attorneys for Abdel Khalek, M.D.

5H

BEFORE THE NEVADA STATE BOARD OF PHARMACY

NEVADA STATE BOARD OF PHARMACY,

CASE NO. 19-003-CS-B-S

Petitioner,

v.

**ROBERT CHANCELLOR, MD,
Certificate of Registration Nos. CS22616 and
PD27416,**

**STATEMENT TO
THE RESPONDENT
AND NOTICE OF HEARING**

Respondent.

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

I.

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

II.

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

III.

The Board has scheduled your hearing on this matter for Wednesday, September 2, 2020, at 9:00 a.m. or soon thereafter. The hearing will occur at the Hilton Garden Inn, 7830 S. Las Vegas Blvd., Las Vegas, Nevada.

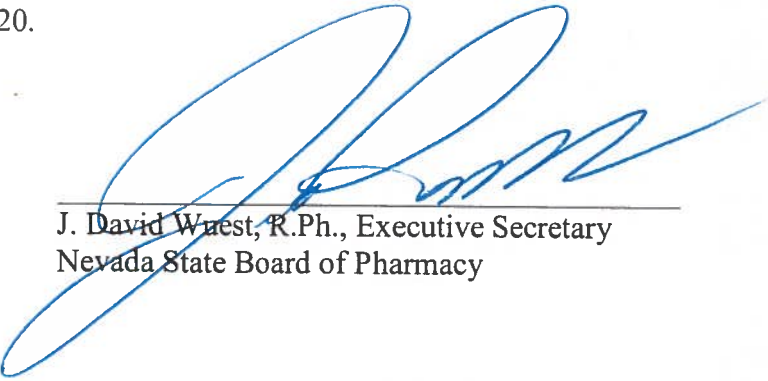
IV.

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

V.

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

DATED this 24th day of July, 2020.



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

NOTICE TO RESPONDENT

You have the right to show the Nevada State Board of Pharmacy that your conduct, as alleged above, complies with all lawful requirements. NRS 233B.127(3). You have the right to a hearing before the Board to answer the Notice of Intended Action and Accusation and present evidence and argument on all issues involved, either personally or through counsel. NRS 233B.121; NRS 233B.127(3); NRS 622A.300(1) and (3); NRS 639.241. To do so, you must complete and file two (2) copies of the Answer and Notice of Defense served herewith, to be received by the Board's Reno office located at 985 Damonte Ranch Parkway – Suite 206, Reno, Nevada 89521, within twenty (20) days of your receipt of this Notice of Intended Action and Accusation. NRS 622A.320; NRS 639.243. Your failure to timely file an Answer and Notice of Defense constitutes an admission of the charges and waiver of the right to a hearing. NRS 639.244. If you fail to appear at the hearing and the Board finds that you were given sufficient legal notice of the hearing, the Board may accept the allegations as true and may proceed to consider the case and render a decision. NRS 622A.350.

CERTIFICATE OF SERVICE

I certify that I am an employee of the Nevada State Board of Pharmacy, and that on this 24th day of July, 2020, I served a true and correct copy of the foregoing document by Certified U.S. Mail to the following:

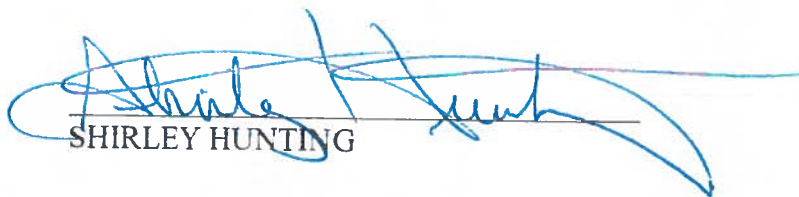
Abdel Khalek, MD
5375 S Ft Apache Rd #102-103
Las Vegas, NV 89148

Robert Chancellor, MD
7975 W Sahara Ave #104
Las Vegas, NV 89117

Lindsay Hoffman, PA-C
5375 S FT Apache Rd #102-103
Las Vegas, NV 89148

Jill Chase, Esq.
Lewis Brisbois
6385 S. Rainbow Blvd., Ste. 600
Las Vegas, NV 89118

E. Brent Bryson, Esq.
7730 W. Sahara Ave., Ste. 109
Las Vegas, NV 89117



SHIRLEY HUNTING

FILED

AUG 17 2020

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

NEVADA STATE BOARD OF PHARMACY,	)	Case No.: 19-003-CS-B-S
)	
Petitioner,)	
)	
vs.	)	ANSWER AND NOTICE OF
	)	DEFENSE
ROBERT CHANCELLOR, MD,)	
Certificate of Registration No. CS22616 and)	
PD27416,)	
)	
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: None.

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

Respondent Denies the allegations contained in the Notice of Intended Action and Accusation, Case No. 19-003-CS-B-S.

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

Date this 11th day of August, 2020.

Robert Chancellor MD
ROBERT CHANCELLOR, MD

51

BEFORE THE NEVADA STATE BOARD OF PHARMACY

NEVADA STATE BOARD OF PHARMACY,

CASE NO. 19-003-CS-C-S

Petitioner,

v.

**LINDSAY HOFFMAN, PA-C,
Certificate of Registration Nos. CS18262 and
PD00177,**

**STATEMENT TO
THE RESPONDENT
AND NOTICE OF HEARING**

Respondent.

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

I.

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

II.

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

III.

The Board has scheduled your hearing on this matter for Wednesday, September 2, 2020, at 9:00 a.m. or soon thereafter. The hearing will occur at the Hilton Garden Inn, 7830 S. Las Vegas Blvd., Las Vegas, Nevada.

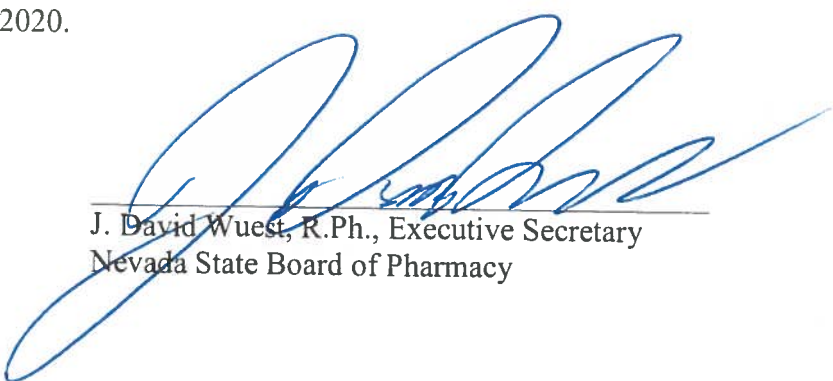
IV.

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

V.

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

DATED this 24th day of July, 2020.



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

CERTIFICATE OF SERVICE

I certify that I am an employee of the Nevada State Board of Pharmacy, and that on this 24th day of July, 2020, I served a true and correct copy of the foregoing document by Certified U.S. Mail to the following:

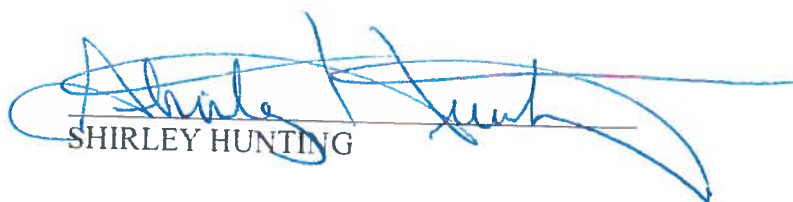
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E. Brent Bryson, Esq.
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Las Vegas, NV 89117


SHIRLEY HUNTING

AUG 17 2020

NEVADA STATE BOARD
OF PHARMACY

BEFORE THE NEVADA STATE BOARD OF PHARMACY

NEVADA STATE BOARD OF PHARMACY,	)	Case No.: 19-003-CS-C-S
)	
Petitioner,)	
)	
vs.	)	ANSWER AND NOTICE OF
	)	DEFENSE
LINDSAY HOFFMAN, P-AC,)	
Certificate of Registration No. CS18262 and)	
PD00177,)	
)	
Respondent.)	
)	
)	

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

1. That her objection to the Notice of Intended Action and Accusation as being incomplete or failing to state clearly the charges against her, is hereby interposed on the following grounds: None.

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

Respondent Denies the allegations contained in the Notice of Intended Action and Accusation, Case No. 19-003-CS-C-S.

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

Date this 11th day of August, 2020.



LINDSAY HOFFMAN, PA-C

5J

AUG 03 2020

NEVADA STATE BOARD
OF PHARMACY

BEFORE THE NEVADA STATE BOARD OF PHARMACY

NEVADA STATE BOARD OF PHARMACY,

Petitioner,

v.

BERNARD KOFI ADDO-QUAYE, MD,
Certificate of Registration No. CS10103,MUKWEL AIYUK, APRN,
Certificate of Registration No. CS25545, andSOLOMON JOSHUA, APRN,
Certificate of Registration No. CS27011,

Respondents.

Case Nos. 19-242-CS-A-S

19-242-CS-B-S

19-242-CS-C-S

NOTICE OF INTENDED ACTION
AND ACCUSATION

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

JURISDICTION

1. The Nevada State Board of Pharmacy (Board) has jurisdiction over this matter because at the time of the events alleged herein, Respondent Bernard Addo-Quaye, MD ("Addo-Quaye"), held a controlled substance registration, Certificate of Registration No. CS10103; Respondent Mukwel Aiyuk, APRN ("Aiyuk"), held a controlled substance registration, Certificate of Registration No. CS25545; and Solomon Joshua, APRN ("Joshua"), held a controlled substance registration, Certificate of Registration No. CS27011, all issued by the Board.

FACTUAL ALLEGATIONS

2. Victor R. Bruce, MD (“Bruce”) was not registered with the Board at the time of the events alleged herein.
3. On December 31, 2014, the Nevada State Board of Medical Examiners (“NSBME”) revoked Bruce’s license to practice medicine, as a result of a federal court criminal judgment entered against Bruce for distribution of a controlled substance.
4. Respondent Bernard Addo-Quaye, MD (“Addo-Quaye”) owns and operates Bernard Addo-Quaye, MD PC dba TruCare Medical Center (“TruCare”) from November 14, 2000 to present. TruCare is located at 2290 McDaniel Street, Suite 2A, North Las Vegas, Nevada.
5. Addo-Quaye was out of the country during certain relevant timeframes in 2018 and 2019.
6. Bruce received a reinstated license to practice medicine from the NSBME, with a restriction from prescribing controlled substances, in September 2018.
7. Addo-Quaye served as Bruce’s preceptor from September 2018 to approximately September 2019.
8. Bruce was employed by TruCare from September 2018 to present.
9. Aiyuk was an independent contractor and/or employed by TruCare during the relevant timeframes in question.
10. Joshua was an independent contractor and/or employed by TruCare during the relevant timeframes in question.
11. Investigators from the Board, the Nevada State Board of Medical Examiners (“NSBME”) conducted an investigation of TruCare and found evidence of misconduct and violations involving the unlawful possession, administration, and prescribing of controlled substances and/or dangerous drugs.

12. Addo-Quaye permitted Bruce, who was restricted from prescribing controlled substances, in the course of operating TruCare to access, store, possess, administer, furnish, prescribe controlled substances and/or dangerous drugs under Addo-Quaye's name and credentials, and/or otherwise falsely represent himself as a practitioner entitled to write or e-scribe controlled substance prescriptions in this state.

13. Addo-Quaye unlawfully prescribed controlled substances and/or dangerous drugs, including, without limitation, Citalopram, Estradiol, Cyanocobalamin, Fluticasone Propionate, Androgel, Focalin, and Lisinopril, for at least four (4) patients with whom he did not have a bona fide therapeutic relationship from September 1, 2019 to September 20, 2019 by providing his blank prescription pads, providing his log-on information to e-scribing systems to Bruce, Aiyuk and/or Joshua and/or failing to secure his secondary authenticator for e-scribing controlled substance and dangerous medications.

14. Aiyuk unlawfully prescribed controlled substances/dangerous drugs under Addo-Quaye's name and credentials, including, but not limited to Norco, Valium, Flexeril, Morphine Sulfate ER, Percocet, Ambien, Hydromorphone, and Clonazepam, for at least three (3) patients from July 8, 2019 to July 10, 2019.

15. Joshua unlawfully prescribed controlled substances/dangerous drugs under Addo-Quaye's name and credentials, including, but not limited to Tramadol, Sumatriptan, Gabapentin, Clonazepam, Ambien, Methadone, Norco, and Narcan, for at least three (3) patients from October 30, 2018 to December 19, 2018.

16. On or about July 21, 2020, Board staff served Bruce with an order pursuant to NRS 639.2895(1) to immediately cease and desist possessing, administering, prescribing and/or dispensing controlled substances and/or dangerous drugs under another practitioner's credentials for Nevada patients from TruCare.

APPLICABLE LAW

17. No person other than a practitioner holding a license to practice his or her profession in this State may prescribe or write a prescription. NRS 639.235(1).

18. A prescription for a controlled substance may be issued only for a legitimate medical purpose and in the usual course of his or her professional practice by an individual practitioner who holds a DEA registration and is authorized to prescribe controlled substances by the jurisdiction in which he is licensed to practice his profession. 21 U.S.C. § 822(a)(2); 21 U.S.C. § 823(f); 21 CFR § 1306.03(a)(1); NRS 453.381(1).

19. It is unlawful for a practitioner to prescribe a controlled substance or dangerous drug except as authorized by law. NRS 453.226(1); NRS 453.321(1)(a); NRS 454.215; NRS 454.301, NRS 639.100(1); NRS 639.23505; NAC 453.410; NAC 639.742; NAC 639.745.

20. It is unlawful for a person to possess, administer or furnish a dangerous drug except as authorized by law. NRS 454.213(1); NRS 454.221; NRS 454.311; NRS 454.316; NRS 454.321 and/or NRS 454.356.

21. It is a felony offense to falsify a prescription for a controlled substance or otherwise purchase or possess a controlled substance except as authorized by law. 21 U.S.C. § 841(a); 21 U.S.C. § 842(a); NRS 453.331(1)(c), (d), (f), (h) and (i).

22. Falsely representing oneself as a practitioner entitled to write prescriptions in this state is a felony offense. 21 U.S.C. § 841(a); 21 U.S.C. § 842(a); NRS 639.281(1); NRS 639.2813(1).

23. Conspiring to violate the Controlled Substances Act is a felony offense. 21 U.S.C. § 846; NRS 453.401(l)(a).

24. Performing or in any way being a party to any fraudulent or deceitful practice or transaction constitutes unprofessional conduct or conduct contrary to the public interest pursuant to NAC 639.945(1)(h) and is grounds for suspension or revocation of any license or registration issued by the Board. NRS 639.210(4).

25. Performing any duties as the holder of a controlled substance registration in an incompetent, unskillful or negligent manner constitutes unprofessional conduct or conduct contrary to the public interest pursuant to NAC 639.945(1)(i) and is grounds for suspension or revocation of any license or registration issued by the Board. NRS 639.210(4).

26. Aiding or abetting a person not licensed to practice pharmacy in the State of Nevada constitutes unprofessional conduct or conduct contrary to the public interest pursuant to NAC 639.945(1)(j) and is grounds for suspension or revocation of any license or registration issued by the Board. NRS 639.210(4).

27. Prescribing a drug as a prescribing practitioner to a patient with whom the practitioner does not have a bona fide therapeutic relationship constitutes unprofessional conduct or conduct contrary to the public interest pursuant to NAC 639.945(1)(n) and (o) and is grounds for suspension or revocation of any license or registration issued by the Board. NRS 639.210(4).

28. 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 or registration issued by the Board. NRS 639.210(11).

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

30. 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).

FIRST CAUSE OF ACTION

Unprofessional Conduct – Party to a Fraudulent/Deceitful Practice/Transaction

31. By permitting Bruce, who had a restricted license excluding prescription of controlled substances, in the course of operating TruCare to access, store, possess, administer, furnish, prescribe and/or dispense controlled substances and dangerous drugs under another practitioner's name, without that practitioner having a bona fide therapeutic relationship with any such patient or the practitioner being present at the time the prescription was dispensed, and/or otherwise falsely represent himself as a practitioner entitled to write prescriptions in this state, including providing blank prescription pads, providing log-on information to e-scribing systems to Bruce, and/or failing to secure secondary authenticator for e-scribing controlled substance medications, Addo-Quaye was a party to a fraudulent or deceitful practice or transaction and engaged in unprofessional conduct and conduct contrary to the public interest in violation of NAC 639.945(1)(h), and is subject to discipline pursuant to NRS 453.236(1) and NRS 639.210(4).

SECOND CAUSE OF ACTION

Unprofessional Conduct – Incompetent, Unskillful or Negligent Performance of Duties

32. By permitting Bruce, who had a restricted license excluding controlled substance prescriptions, in the course of operating TruCare to access, store, possess, administer, furnish, prescribe and/or dispense controlled substances and dangerous drugs under another practitioner's name, without that practitioner having a bona fide therapeutic relationship with any such patient, and/or otherwise falsely represent himself as a practitioner entitled to write controlled substance prescriptions in this state, including providing blank prescription pads, providing log-on information to e-scribing systems to Bruce, and/or failing to secure secondary authenticator for e-scribing controlled substance medications, Addo-Quaye performed his duties as the holder of a controlled substance registration in an incompetent, unskillful or negligent manner and engaged

in unprofessional conduct and conduct contrary to the public interest in violation of NAC 639.945(1)(i), and is subject to discipline pursuant to NRS 453.236(1) and NRS 639.210(4).

33. By permitting Aiyuk to treat patients and to utilize Addo-Quaye's name and credentials by providing log-on information to e-scribing systems, and/or failing to secure the secondary authenticator for e-scribing controlled substance medications, Addo-Quaye and Aiyuk performed their duties as holders of controlled substance registrations in an incompetent, unskillful or negligent manner and engaged in unprofessional conduct and conduct contrary to the public interest in violation of NAC 639.945(1)(i), and are subject to discipline pursuant to NRS 453.236(1) and NRS 639.210(4).

34. By permitting Joshua to treat patients, and to utilize Addo-Quaye's name and credentials by providing log-on information to e-scribing systems, and/or failing to secure the secondary authenticator for e-scribing controlled substance medications, Addo-Quaye and Joshua performed their duties as holders of controlled substance registrations in an incompetent, unskillful or negligent manner and engaged in unprofessional conduct and conduct contrary to the public interest in violation of NAC 639.945(1)(i), and are subject to discipline pursuant to NRS 453.236(1) and NRS 639.210(4).

THIRD CAUSE OF ACTION

Unprofessional Conduct – Aiding and Abetting Unlicensed Practice

35. By permitting Bruce, who had a restricted license excluding prescriptions of controlled substances, in the course of operating TruCare to access, store, possess, administer, furnish, prescribe and/or dispense controlled substances and dangerous drugs under another practitioner's name, without that practitioner having a bona fide therapeutic relationship with any such patient, and/or otherwise falsely represent himself as a practitioner entitled to write controlled substance prescriptions in this state, including providing blank prescription pads,

providing log-on information to e-scribing systems to Bruce, and/or failing to secure secondary authenticator for e-scribing controlled substance medications, Addo-Quaye aided or abetted a person not fully licensed to practice pharmacy in the State of Nevada and engaged in unprofessional conduct and conduct contrary to the public interest in violation of NAC 639.945(1)(j), and is subject to discipline pursuant to NRS 453.236(1) and NRS 639.210(4).

FOURTH CAUSE OF ACTION

Unprofessional Conduct – Prescribing Without Bona Fide Therapeutic Relationship

36. By unlawfully prescribing controlled substances to patients with whom he did not have a bona fide therapeutic relationship, Addo-Quaye engaged in unprofessional conduct and conduct contrary to the public interest in violation of NAC 639.945(1)(n) and (o), and is subject to discipline pursuant to NRS 453.236(1) and NRS 639.210(4).

FIFTH CAUSE OF ACTION

Violations of Federal Controlled Substances Act

37. By permitting Bruce, who had a restricted license excluding controlled substance prescriptions, in the course of operating TruCare to access, store, possess, administer, furnish, prescribe and/or dispense controlled substances and dangerous drugs under another practitioner's name, without that practitioner having a bona fide therapeutic relationship with any such patient or the practitioner being present at the time the prescription was dispensed, and/or otherwise falsely represent himself as a practitioner entitled to write prescriptions in this state, including providing blank prescription pads, providing log-on information to e-scribing systems to Bruce, and/or failing to secure the secondary authenticator for e-scribing controlled substance medications, Addo-Quaye violated, attempted to violate, assisted or abetted in the violation of or conspired to violate 21 U.S.C. § 822(a)(2), 21 U.S.C. § 823(f), 21 U.S.C. § 841(a), 21 U.S.C. §

842(a), 21 U.S.C. § 846 and 21 CFR §§ 1306.03–1306.05, and is subject to discipline pursuant to NRS 453.236(1) and NRS 639.210(11).

SIXTH CAUSE OF ACTION
Violations of State Law for Unlicensed Practice

38. By permitting Bruce, who had a restricted license excluding controlled substance prescriptions, in the course of operating TruCare to access, store, possess, administer, furnish, prescribe and/or dispense controlled substances and dangerous drugs under another practitioner's name, without that practitioner having a bona fide therapeutic relationship with any such patient or the practitioner being present at the time the prescription was dispensed, and/or otherwise falsely represent himself as a practitioner entitled to write controlled substance prescriptions in this state, including providing blank prescription pads, providing log-on information to e-scribing systems to Bruce, and/or failing to secure secondary authenticator for e-scribing controlled substance medications, Addo-Quaye violated, attempted to violate, assisted or abetted in the violation of or conspired to violate, or knowingly permitted, allowed, condoned or failed to report a violation of NRS 453.226, NRS 453.316, NRS 453.321(1)(a), NRS 453.331 (1)(c)(d)(f)&(i), NRS 453.381(1), NRS 453.401(1)(a), NRS 454.213, NRS 454.215, NRS 454.221, NRS 454.311, NRS 454.316, NRS 454.321, NRS 639.100(1), NRS 639.235, NRS 639.23505, NRS 639.281, NRS 639.2813 and NRS 639.310, and is subject to discipline pursuant to NRS 453.236(1) and NRS 639.210(12).


SEVENTH CAUSE OF ACTION
Commission of Acts that Render Registration Inconsistent with the Public Interest

39. By their actions as set forth herein, Addo-Quaye, Aiyuk, and Bruce have committed acts that render their registrations to prescribe controlled substances inconsistent with

the public interest pursuant to NRS 453.231, and are 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.

DATED this 3rd day of August, 2020.



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

NOTICE TO RESPONDENT

You have the right to show the Nevada State Board of Pharmacy that your conduct, as alleged above, complies with all lawful requirements. NRS 233B.127(3). You have the right to a hearing before the Board to answer the Notice of Intended Action and Accusation and present evidence and argument on all issues involved, either personally or through counsel. NRS 233B.121; NRS 233B.127(3); NRS 622A.300(1) and (3); NRS 639.241. To do so, you must complete and file two (2) copies of the Answer and Notice of Defense served herewith, to be received by the Board's Reno office located at 985 Damonte Ranch Parkway – Suite 206, Reno, Nevada 89521, within twenty (20) days of your receipt of this Notice of Intended Action and Accusation. NRS 622A.320; NRS 639.243. Your failure to timely file an Answer and Notice of Defense constitutes an admission of the charges and waiver of the right to a hearing. NRS 639.244. If you fail to appear at the hearing and the Board finds that you were given sufficient legal notice of the hearing, the Board may accept the allegations as true and may proceed to consider the case and render a decision. NRS 622A.350.

BEFORE THE NEVADA STATE BOARD OF PHARMACY

NEVADA STATE BOARD OF PHARMACY,

Petitioner,

v.

**BERNARD KOFI ADDO-QUAYE, MD,
Certificate of Registration No. CS10103,**

Respondent.

CASE NO. 19-242-CS-A-S

**STATEMENT TO THE RESPONDENT
AND NOTICE OF HEARING**

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

I.

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

II.

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

III.

The Board has scheduled your hearing on this matter for Wednesday, September 2, 2020, at 9:00 a.m. or soon thereafter. The hearing will occur at the Hilton Garden Inn, 7830 S. Las Vegas Blvd., Las Vegas, Nevada.

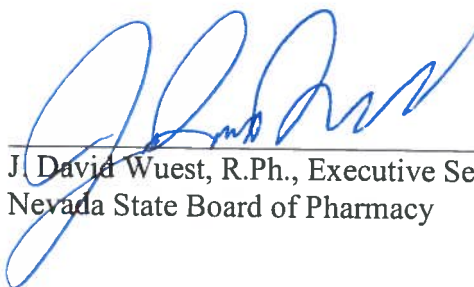
IV.

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

V.

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

DATED this 3rd day of August, 2020.



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

CERTIFICATE OF SERVICE

I certify that I am an employee of the Nevada State Board of Pharmacy, and that on this 4th day of August, 2020, I served a true and correct copy of the foregoing document by Certified U.S.

Mail to the following:

BERNARD KOFI ADDO-QUAYE, MD
2290 MCDANIEL ST #2A
N. LAS VEGAS, NV 89030

MUKWEL AIYUK, APRN
2021 S JONES BLVD
LAS VEGAS, NV 89146

MUKWEL AIYUK, APRN
304 S JONES BLVD
LAS VEGAS, NV 89107

SOLOMON JOSHUA, APRN
2290 MCDANIEL ST #2A
N. LAS VEGAS, NV 89030

SOLOMON JOSHUA, A.P.R.N.
3305 EAST ROME BLVD #2068
NORTH LAS VEGAS, NV 89086

JOHN A. HUNT, ESQ.
CLARK HILL PLC
3800 HOWARD HUGHES PARKWAY
LAS VEGAS, NV 89169



SHIRLEY HUNTING

FILED**AUG 24 2020****NEVADA STATE BOARD
OF PHARMACY**

260552836

1 John A. Hunt, Esq. (NSBN 1888)
 2 Bert Wuester Jr., Esq. (NSBN 5556)
 3 **CLARK HILL, PLLC**
 3800 Howard Hughes Pkwy, Suite 500
 4 Las Vegas, Nevada 89169
 ph. (702) 862-8300; fax (702) 862-8400
 5 email: jhunt@clarkhill.com
 email: bwuester@clarkhill.com
 6 Attorneys for Respondent, Bernard Kofi Addo-Quaye, MD

BEFORE THE NEVADA STATE BOARD OF PHARMACY

NEVADA STATE BOARD OF PHARMACY,

Petitioner,

vs.

12 BERNARD KOFI ADDO-QUAYE, MD,
 13 Certificate of Registration No. CS10103,

14 MUKWEI, AIYUK, APRN,
 15 Certificate of Registration No. CS25545, and

16 SOLOMON JOSHUA, APRN,
 17 Certificate of Registration No, CS27011,

Respondents.

Case Nos. 19-242-CS-A-S
 19-242-CS-B-S
 19-242-CS-C-S

**ANSWER AND NOTICE OF
 DEFENSE OF RESPONDENT,
 BERNARD KOFI ADDO-QUAYE,
 MD**

19 Respondent, Bernard Kofi Addo-Quaye, MD ("Dr. Addo-Quaye"), by and through
 20 counsel, hereby submit his Answer and Notice of Defense ("Answer"), pursuant to NRS
 21 639.244¹, to the *Notice of Intended Action and Accusation* dated August 3, 2020 ("Accusation"),
 22

24 ¹ NRS 639.244 Notice of Defense: Form; effect of failure to file.

25 1. The form for the Notice of Defense must be prepared and furnished by the Board and permit the respondent, by
 26 completing and signing the notice, to:

(a) Object to the accusation as being incomplete and failing to set forth clearly the charges; and
 (b) Deny or admit, in part or in whole, the violations alleged.

27 2. The Notice of Defense must be signed by the respondent or his or her attorney under penalty of perjury. Failure
 28 to file a Notice of Defense constitutes a waiver of the respondent's right to a hearing, but the Board may grant a
 hearing.

1 with the Nevada State Board of Pharmacy (the "Board"), in the above-captioned action.

2
3 1. Pursuant to NRS 639.244(1)(a), Dr. Addo-Quaye objects to the Accusation as being
4 incomplete and failing to set forth clearly the charges against him.

5
6 2. Pursuant to NRS 639.244(1)(b), Dr. Addo-Quaye denies in whole the violations alleged
7 against him in the Accusation.
8

9
10 3. Pursuant to NRS 639.244(2), by filing this Answer, Dr. Addo-Quaye has not waived the
11 right to a hearing before the Board.
12

13
14 AFFIRMATIVE DEFENSES

15 1. The allegations contained in the Board's Accusation fail to state a cause of action upon
16 which relief can be granted.

17
18 2. The violations alleged against Respondent in the Board's Accusation are subject to a
19 demand/application pursuant to NRS 233B.121(2)(d) for a more definite and detailed statement.
20 By this defense, Dr. Addo-Quaye specifically provides that he does not waive the right to such a
21 demand/application even in light of this Answer.

22
23 3. Pursuant to NRS 622A.330, even though Dr. Addo-Quaye has provided this Answer, he
24 specifically reserves the right to request a copy of all documents and other evidence intended to
25 be presented by the Board at the hearing in support of its Accusation, as well as a list of proposed
26 witnesses it intends to call at the hearing.
27

1 4. The answering Respondent hereby incorporates by reference those affirmative defenses
 2 enumerated in Rule 8 of the Nevada Rules of Civil Procedure as if fully set forth herein. In the
 3 event further investigation or discovery reveals the applicability of such defenses, this answering
 4 Respondent reserves the right to seek leave of the Board or appropriate authority to amend this
 5 Answer to specifically assert the same. Such defenses are herein incorporated by reference for
 6 the specific purpose of not waiving the same.

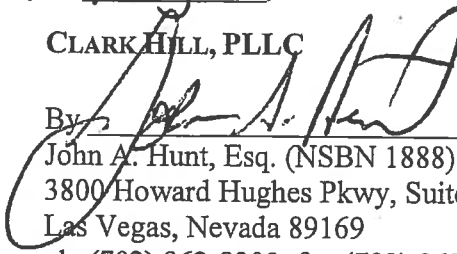
7
 8 5. It has been necessary for this answering Respondent to employ the services of an attorney
 9 to defend this action and a reasonable sum should be allowed as and for attorney's fees, together
 10 with the costs expended in this action.

11
 12 WHEREFORE, Dr. Addo-Quaye prays the Accusation be dismissed, no discipline issue,
 13 that the initiating party take nothing by way of its Accusation and go hence with its costs.

14 Pursuant to NRS 639.244(2), this Answer is hereby signed by the answering
 15 Respondent's attorney.

16
 17 Respectfully submitted this 18 day of Aug, 2020.

18 CLARK HILL, PLLC

19 By 
 20 John A. Hunt, Esq. (NSBN 1888)
 21 3800 Howard Hughes Pkwy, Suite 500
 22 Las Vegas, Nevada 89169
 23 ph. (702) 862-8300; fax (702) 862-8400
 24 email: jhunt@clarkhill.com
 25 Attorneys for Respondent,
 26 Bernard Kofi Addo-Quaye, MD
 27
 28

CERTIFICATE OF SERVICE

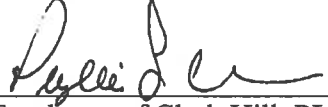
I HEREBY CERTIFY that on the 18th day of August, 2020, I caused the above and foregoing **ANSWER AND NOTICE OF DEFENSE OF RESPONDENT, BERNARD KOFI ADDO-QUAYE, MD** to be served by placing a true and correct copy of the same in the U.S. Mail, at Las Vegas, Nevada, first class postage fully prepaid and addressed to the following **AND** via email as follows:

Courtney K. Lee, Esq.
General Counsel
Nevada State Board of Pharmacy
985 Damonte Ranch Parkway, Suite 206
Reno, Nevada 89521

email: c.lee@pharmacy.nv.gov

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

email: dwuest@pharmacy.nv.gov

By 
An Employee of Clark Hill, PLLC

5K

BEFORE THE NEVADA STATE BOARD OF PHARMACY

NEVADA STATE BOARD OF PHARMACY,

Petitioner,

v.

**MUKWEL AIYUK, APRN,
Certificate of Registration No. CS25545,**

Respondent.

CASE NO. 19-242-CS-B-S

**STATEMENT TO THE RESPONDENT
AND NOTICE OF HEARING**

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

I.

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

II.

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

III.

The Board has scheduled your hearing on this matter for Wednesday, September 2, 2020, at 9:00 a.m. or soon thereafter. The hearing will occur at the Hilton Garden Inn, 7830 S. Las Vegas Blvd., Las Vegas, Nevada.

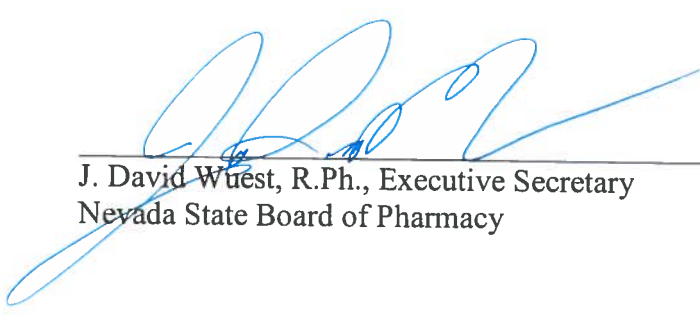
IV.

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

V.

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

DATED this 3rd day of August, 2020.



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

CERTIFICATE OF SERVICE

I certify that I am an employee of the Nevada State Board of Pharmacy, and that on this 4th day of August, 2020, I served a true and correct copy of the foregoing document by Certified U.S. Mail to the following:

BERNARD KOFI ADDO-QUAYE, MD
2290 MCDANIEL ST #2A
N. LAS VEGAS, NV 89030


MUKWEL AIYUK, APRN
2021 S JONES BLVD
LAS VEGAS, NV 89146

MUKWEL AIYUK, APRN
304 S JONES BLVD
LAS VEGAS, NV 89107

SOLOMON JOSHUA, APRN
2290 MCDANIEL ST #2A
N. LAS VEGAS, NV 89030

SOLOMON JOSHUA, A.P.R.N.
3305 EAST ROME BLVD #2068
NORTH LAS VEGAS, NV 89086

JOHN A. HUNT, ESQ.
CLARK HILL PLC
3800 HOWARD HUGHES PARKWAY
LAS VEGAS, NV 89169



SHIRLEY HUNTING

FILED

AUG 24 2020

NEVADA STATE BOARD
OF PHARMACY

BEFORE THE NEVADA STATE BOARD OF PHARMACY

NEVADA STATE BOARD OF PHARMACY,

CASE NO. 19-242-CS-B-S

Petitioner,

v.

MUKWEL AIYUK, APRN,
Certificate of Registration No. CS25545,ANSWER AND NOTICE
OF DEFENSE

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").

I did not prescribe any Substances/dangerous drugs using the name and Credentials of Bernard Addo-Quaye. As an advanced practice registered nurse (APRN) in the State of Nevada, holder of a DEA registration and authorized to prescribe medications/Controlled Substances in the State, I had no reason or incentive to use another person's name and Credentials to prescribe medications/Controlled Substances. I was never given and did not have possession of Bernard Addo-Quaye's blank prescription pads; I did not have his e-Scribing log-in information, and did not use the Computer Systems in Bernard Addo-Quaye's office, or any other Computer System, to e-Scribe medications/Substances.

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

I provided my Credentials (licenses, diplomas, registrations, et to this clinic prior to Commencing work there and assumed the their systems had been set up to ensure that my orders reflect the fact that they came from me.

I was never given and did not have possession of Bernard Addo-Quaye's blank prescription pads.

I did not use the Computer Systems in Bernard Addo-Quaye Office, or any other Computer System, to e-cribe medical or Controlled Substances.

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 21st day of August, 2020.


MUKWEL AIYUK, APRN

FILED

SEP 22 2020

BEFORE THE NEVADA STATE BOARD OF PHARMACYNEVADA STATE BOARD
OF PHARMACY

NEVADA STATE BOARD OF PHARMACY,	)	CASE NO.	19-242-CS-A-S
	)		19-242-CS-B-S
Petitioner,	)		19-242-CS-C-S
)		
v.)		
)		
BERNARD KOFI ADDO-QUAYE, M.D.)		
Certificate of Registration No. CS10103,)		
)		
MUKWEL AIYUK, APRN,)		
Certificate of Registration No. CS25545, and)		
)		
SOLOMON JOSHUA, APRN,)		
Certificate of Registration No. CS27011)		
Respondent.)		
	/		

**ANSWER AND NOTICE OF DEFENSE
OF RESPONDENT MUKWEL AIYUK, APRN**

Respondent Mukwel Aiyuk, APRN hereby files with the Nevada State Board of Pharmacy ("Board"), his Answer and Notice of Defense to the Notice of Intended Action and Accusation ("Accusation") filed on August 3, 2020.

ANSWER TO ACCUSATION

1. Mr. Aiyuk hereby declares that he does not object to the Accusation as being incomplete or failing to state clearly the charges against him and acknowledges that the Board has jurisdiction in this matter as Mr. Aiyuk currently holds an active controlled substance registration with the Board.

2. Mr. Aiyuk answers the Factual Allegations contained in the Accusation as follows:

Paragraph 2: Mr. Aiyuk is without sufficient knowledge or information to address the accuracy of the assertions contained therein;

Paragraph 3: Mr. Aiyuk is without sufficient knowledge or information to address the accuracy of the assertions contained therein;

Paragraph 4: Mr. Aiyuk agrees with the assertions therein to the extent that to his knowledge and belief, Dr. Addo-Quaye is the owner of TruCare Medical Center (“TruCare”). He is without sufficient knowledge to address the accuracy of the other assertions set forth in Paragraph 4;

Paragraph 5: Mr. Aiyuk agrees with the assertions set forth therein to the extent that he was informed Dr. Addo-Quaye was traveling out of the country during the limit times he provided coverage at TruCare.

Paragraph 6: Mr. Aiyuk is without sufficient knowledge and information to address the accuracy of the assertions set forth therein;

Paragraph 7: Mr. Aiyuk is without sufficient knowledge and information to address the accuracy of the assertions set forth therein;

Paragraph 8: Mr. Aiyuk is without sufficient knowledge and information to address the accuracy of the assertions set forth therein;

Paragraph 9: Mr. Aiyuk agrees with the assertions set forth therein to the extent that he was an independent contract with TruCare in order to provide limited coverage services for Dr. Addo-Quaye.

Paragraph 10: Mr. Aiyuk is without sufficient knowledge and information to address the accuracy of the assertions set forth therein, however he asserts that he never met Mr. Joshua and to his knowledge Mr. Joshua did not provide services at TruCare as an APRN during September 2019 during the time Mr. Aiyuk was present at TruCare;

Paragraph 11: Mr. Aiyuk is without sufficient knowledge and information to address the accuracy of the assertions set forth therein.

Paragraph 12: Mr. Aiyuk is without sufficient knowledge and information to address the accuracy of the allegations set forth therein

Paragraph 13: Mr. Aiyuk denies the allegations contained therein to the extent that Dr. Addo-Quaye did not provide him with or provide access to blank prescription pads and asserts that he was never provided Dr. Addo-Quaye's login information for his e-prescribing system nor access to such a system. Mr. Aiyuk is without sufficient knowledge and information to address the other allegations contained therein.

Paragraph 14: Mr. Aiyuk denies that he unlawfully prescribed controlled substances and/or dangerous drugs under Dr. Addo-Quaye's name and credentials. Mr. Aiyuk admits that he saw established patients at TruCare for a few days in July and a few days in September 2019. Mr. Aiyuk noted prescription orders on medical charts he signed for patient he personally saw and provide the charts to staff to transmit to the appropriate pharmacies as further discussed below.

Paragraph 15: Mr. Aiyuk is without sufficient knowledge and information to address the accuracy of the allegations set forth therein;

Paragraph 16: Mr. Aiyuk is without sufficient knowledge and information to address the accuracy of the assertions set forth therein;

3. As to the Second and Seventh Causes of Action which name Mr. Aiyuk, he hereby denies all allegations contained therein. No further Cause of Action set forth in the Accusation pertains to Mr. Aiyuk and therefore he submits no answer to those Causes of Action.

NOTICE OF DEFENSE

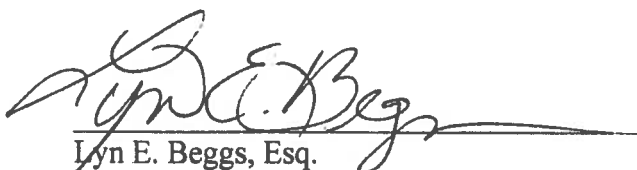
Mr. Aiyuk holds an Advanced Practice Registered Nurse license with the Nevada State Board of Nursing with prescribing privileges and a controlled substance registration with the Board. Mr. Aiyuk provided coverage for Dr. Addo-Quaye as an independent contractor at TruCare while Dr. Addo-Quaye was out of the country for very short durations of time. Mr. Aiyuk had no interactions with any other providers at TruCare during this time, including Dr. Bruce or Mr. Joshua.

During the limited time that Mr. Aiyuk provided coverage for Dr. Addo-Quaye, per practice protocols, he saw established patients of the practice and performed appropriate examinations prior to ordering primarily refills of medications for the patients he personally saw. Mr. Aiyuk signed all paper chart notes for patient encounters he performed as reflected in the records of TruCare. Upon completion of a patient encounter, Mr. Aiyuk, as directed by Dr. Addo-Quaye, provided the chart notes to TruCare medical assistants who carried out any orders and transmitted the prescriptions using the electronic prescription system of the practice. Mr. Aiyuk was unaware that staff was transmitting prescriptions under Dr. Addo-Quaye's name. Mr. Aiyuk would have no reason to believe prescriptions would not be transmitted under his credentials as he is legally authorized to prescribe dangerous drugs and controlled substances and the chart notes authorizing the prescriptions bear his signature.

NAC 639.7102(1)(b) authorizes a practitioner to delegate the task of transmitting a prescription to a pharmacy via a computer system authorized by the Board. To Mr. Aiyuk's knowledge, the e-prescribing system utilized by TruCare was approved by the Board and therefore he appropriately delegated the task of transmitting the prescriptions to staff who he was informed were authorized to do so by Dr. Addo-Quaye.

As indicated above, Mr. Aiyuk denies that he has committed any violation as set forth in the Second and Seventh Causes of Action set forth in the Accusation.

Respectfully submitted this 21st day of September, 2020.

A handwritten signature in black ink, appearing to read "Lyn E. Beggs", with a long horizontal flourish extending to the right.

Lyn E. Beggs, Esq.

Attorney for Respondent Mukwel Aiyuk, APRN

5L

FILED**MAY 26 2020****NEVADA STATE BOARD
OF PHARMACY****BEFORE THE NEVADA STATE BOARD OF PHARMACY****NEVADA STATE BOARD OF PHARMACY,****Case No. 20-001-CS-N****Petitioner,****v.****NOTICE OF INTENDED ACTION
AND ACCUSATION****JEFF CHEN, M.D.,
Certificate of Registration No. CS18013,****Respondent.**

J. David Wuest, in his official capacity as Executive Secretary of the Nevada State Board of Pharmacy, makes the following that will serve as both a notice of intended action under Nevada Revised Statutes (NRS) 233B.127(3) and as an accusation under NRS 622A.300(1) and/or 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, Respondent Jeff Chen, M.D. (Chen), held a Nevada Controlled Substance Registration, Certificate No. CS18013, issued by the Board.

FACTUAL ALLEGATIONS**II.**

In December 2019, Chen was the medical director of Breathe Bar located on South Center Street in Reno, Nevada.

III.

Amy Burkett (Burkett) owned and operated Breathe Bar. Burkett is not a practitioner licensed by the Nevada State Board of Pharmacy, Nevada State Board of Medical Examiners, Nevada State Board of Osteopathic Medicine, or Nevada State Board of Nursing.

IV.

Breathe Bar employed registered nurses (“RNs”).

V.

Breathe Bar’s RN staff provided patient assessments using a proprietary Intravenous (IV)/Intramuscular (IM) Therapy Intake Form. An RN would then communicate his/her assessment of the patient to Chen by telephone or text, in response to which Chen would then approve the medication(s) by telephone or text.

VI.

Chen had no direct contact with, did not examine and did not establish a *bona fide* therapeutic relationship with the patients.

VII.

With Chen’s knowledge and authorization and at his direction, Breathe Bar’s RN staff provided on-site medical treatment to patients, including the administration of dangerous drugs through intravenous (“IV”) therapy and/or injections without direct practitioner supervision, and without a patient-specific and medication-specific written chart order for the patient and/or medication.

VIII.

Chen directed Breathe Bar’s RN staff and Burkett to obtain, access, possess, and store dangerous drugs from Breathe Bar’s inventory, and administer dangerous drugs to patients when he was not on site.

IX.

Chen directed Breathe Bar’s RN staff to counsel patients regarding their medical treatment, including the administration of dangerous drugs.

X.

Chen permitted opened, undated multi-dose injectables to be used for treatment of Breathe Bar patients.

APPLICABLE LAW

XI.

No person may possess or administer a dangerous drug in Nevada without specific statutory authority to do so. NRS 454.213, NRS 454.221, NRS 454.316, NRS 454.321; NRS 454.356.

XII.

A practitioner can give a registered nurse (RN) limited authority to possess and administer dangerous drugs without the practitioner on-site by way of NRS 454.213(1)(c), which states in relevant part:

a drug or medicine referred to in NRS 454.181 to 454.371, inclusive, may be possessed and administered by . . . a registered nurse licensed to practice professional nursing or licensed practical nurse, at the direction of a prescribing physician, physician assistant licensed pursuant to chapter 630 or 633 of NRS, dentist, podiatric physician or advanced practice registered nurse, *or pursuant to a chart order, for administration to a patient at another location.*

NRS 454.213(1)(a) (*emphasis added*); *see also* NRS 639.100(1).

XIII.

Chart orders must be written (NRS 454.223) and are patient-specific and medication-specific.¹

XIV.

Multi-dose injectable vials must be dated at the time the seal of the multi-dose container is breached. The contents of the container may be used within 28 days after the breach of the seal occurred. Contents not used within the period set forth may not be used and must be destroyed. NAC 639.67057(2)

¹ See NRS 639.004 “Chart order” means an order entered on the chart of a patient in a hospital, facility for intermediate care or facility for skilled nursing which is licensed as such by the Division of Public and Behavioral Health of the Department of Health and Human Services or on the chart of a patient under emergency treatment in a hospital by a practitioner or on the written or oral order of a practitioner authorizing the administration of a drug to the patient.

XV.

NAC 639.945 Unprofessional conduct; owner responsible for acts of employees.

1. The following acts or practices by a holder of any license, certificate or registration issued by the Board or any employee of any business holding any such license, certificate or registration are declared to be, specifically but not by way of limitation, unprofessional conduct and conduct contrary to the public interest:

....

(g) Supplying or diverting drugs, biologicals, medicines, substances or devices which are legally sold in pharmacies or by wholesalers, so that unqualified persons can circumvent any law pertaining to the legal sale of such articles.

(h) Performing or in any way being a party to any fraudulent or deceitful practice or transaction.

(i) Performing 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.

(j) Aiding or abetting a person not licensed to practice pharmacy in the State of Nevada.

(k) Performing any act, task or operation for which licensure, certification or registration is required without the required license, certificate or registration.

....

(n) Dispensing a drug as a prescribing practitioner to a patient with whom the prescribing practitioner does not have a bona fide therapeutic relationship.

....

XVI.

NRS 639.210 Grounds for suspension or revocation of certificate, license, registration or permit or denial of application. The Board may suspend or revoke any certificate, license, registration or permit issued pursuant to this chapter, and deny the application of any person for a certificate, license, registration or permit, if the holder or applicant:

....

4. Is guilty of unprofessional conduct or conduct contrary to the public interest;

....

12. Has violated, attempted to violate, assisted or abetted in the violation of or conspired to violate any of the provisions of this

chapter or any law or regulation relating to drugs, the manufacture or distribution of drugs or the practice of pharmacy, or has knowingly permitted, allowed, condoned or failed to report a violation of any of the provisions of this chapter or any law or regulation relating to drugs, the manufacture or distribution of drugs or the practice of pharmacy committed by the holder of a certificate, license, registration or permit;

....

XVII.

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).

XVIII.

FIRST CAUSE OF ACTION

Unlawful Access and Possession of Dangerous Drugs (Statutory Violations)

XIX.

By allowing Breathe Bar's RN staff to operate Breathe Bar and to obtain, access, possess administer and/or store dangerous drugs when he was not on site, before he examined the patient, before he wrote a patient-specific order and without his direct supervision, Chen violated, attempted to violate, assisted or abetted in the violation of or conspired to violate NRS 454.213(1), NRS 454.316, NRS 454.221, NRS 454.321, NRS 454.356 and NRS 639.100(1), and is subject to discipline pursuant to NRS 639.210(12).

SECOND CAUSE OF ACTION

Unlawful Access and Possession of Dangerous Drugs (Unprofessional Conduct)

XX.

By allowing Breathe Bar's RN staff to operate Breathe Bar and to obtain, access, possess administer and/or store dangerous drugs when he was not on site, before he examined the patient, before he wrote a patient-specific order and without his direct supervision, Chen performed his duties as the holder of a Nevada controlled substance registration in an incompetent, unskillful or

negligent manner, was party to a fraudulent or deceitful practice or transaction, and engaged in, or aided and abetted Breathe Bar's staff to engage in, unprofessional conduct as defined in NAC 639.945(g), (h), (i), (j) and (k), and is subject to discipline pursuant to NRS 639.210(4).

THIRD CAUSE OF ACTION

Unlawful Administration of Dangerous Drugs – No Bona Fide Therapeutic Relationship and No Authority to Determine Medical Necessity

XXI.

By authorizing Breathe Bar's RN staff to act under his authority to operate BREATHE BAR, to administer dangerous drugs to patients who had not been examined by a practitioner, with whom Chen did not have a *bona fide* therapeutic relationship and for whom Chen had neither diagnosed or determined that a dangerous drug was medically necessary, Chen engaged in unprofessional conduct and conduct contrary to the public interest in violation of NAC 639.945(1)(o), and is subject to discipline pursuant to NRS 639.210(4).

FOURTH CAUSE OF ACTION

Failure to Follow Procedures Following Breach of the Seal of a Multi-Dose Injectable Container

XXII.

By failing to follow procedures to reflect expiration dates on opened multi-dose injectable vials, Chen violated, attempted to violate, assisted or abetted in the violation of or conspired to violate NAC 639.67057(2), and is subject to discipline pursuant to NRS 639.210(12).

FIFTH CAUSE OF ACTION

Controlled Substance Registration Inconsistent with the Public Interest

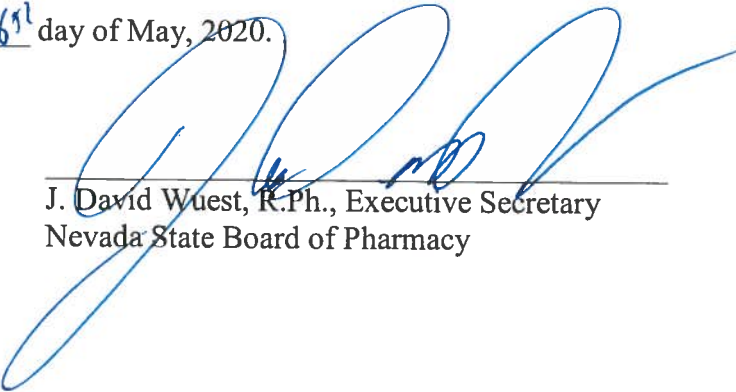
XXIII.

By his actions as set forth herein, Chen has committed acts that render his 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).

XXIV.

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

Signed this 26th day of May, 2020.



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

NOTICE TO RESPONDENT

You have the right to show the Nevada State Board of Pharmacy that your conduct, as alleged above, complies with all lawful requirements. NRS 233B.127(3). You have the right to a hearing before the Board to answer the Notice of Intended Action and Accusation and present evidence and argument on all issues involved, either personally or through counsel. NRS 233B.121; NRS 233B.127(3); NRS 622A.300(1) and (3); NRS 639.241. To do so, you must complete and file of two copies of the Answer and Notice of Defense served herewith, to be received by the Board's Reno office located at 985 Damonte Ranch Parkway – Suite 206, Reno, Nevada 89521, within twenty (20) days of your receipt of this Notice of Intended Action and Accusation. NRS 622A.320; NRS 639.243. Your failure to timely file an Answer and Notice of Defense constitutes an admission of the charges and waiver of the right to a hearing. NRS 639.244. If you fail to appear at the hearing and the Board finds that you were given sufficient legal notice of the hearing, the Board may accept the allegations as true and may proceed to consider the case and render a decision. NRS 622A.350.

BEFORE THE NEVADA STATE BOARD OF PHARMACY

NEVADA STATE BOARD OF PHARMACY,

CASE NO. 20-001-CS-N

Petitioner,

v.

**JEFF CHEN, M.D.,
Certificate of Registration No. CS18013,**

**STATEMENT TO
THE RESPONDENT
AND NOTICE OF HEARING**

Respondent.

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

I.

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

II.

You have the right to show the Nevada State Board of Pharmacy that your conduct, as alleged above, complies with all lawful requirements. NRS 233B.127(3). You have the right to a hearing before the Board to answer the Notice of Intended Action and Accusation and present evidence and argument on all issues involved, either personally or through counsel. NRS 233B.121; NRS 233B.127(3); NRS 622A.300(1) and (3); NRS 639.241. To do so, you must complete and file two (2) copies of the Answer and Notice of Defense served herewith, to be received by the Board's Reno office located at 985 Damonte Ranch Parkway – Suite 206, Reno, Nevada 89521, within twenty (20) days of your receipt of this Statement and Notice, and of the Notice of Intended Action and Accusation served within. NRS 622A.320; NRS 639.243.

III.

The Board has scheduled your hearing on this matter for Wednesday, December 2, 2020, 9:00 a.m. or soon thereafter. The hearing will occur at the Hyatt Place, 1790 East Plumb Lane, Reno, Nevada.

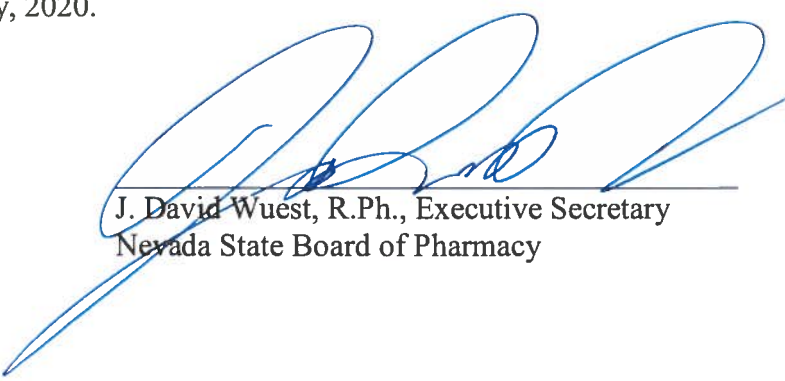
IV.

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

V.

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

DATED this 26th day of May, 2020.




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

CERTIFICATE OF SERVICE

I certify that I am an employee of the Nevada State Board of Pharmacy, and that on this 28th day of May, 2020, I served a true and correct copy of the foregoing document by Certified U.S. Mail to the following:

Jeff Chen, MD
847 Marsh Avenue
Reno, NV 89509



SHIRLEY HUNTING

FILED

JUL 13 2020

NEVADA STATE BOARD
OF PHARMACY

BEFORE THE NEVADA STATE BOARD OF PHARMACY

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NEVADA STATE BOARD OF PHARMACY,

Petitioner

v.

JEFF CHEN, M.D.,
Certificate of Registration No. CS18013

Respondent

Case No.: 20-001-CS-N

ANSWER AND NOTICE
OF DEFENSE

COMES NOW, Respondent JEFF CHEN, M.D., by and through his counsel of record, EDWARD J. LEMONS, ESQ. and LEMONS, GRUNDY & EISENBERG, and 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:

The findings alleged misrepresent the roles and actions of Dr. Chen while serving as Medical Director of Breathe Bar for intravenous fluid therapy. On December 19, 2019, Joseph Depczynski, investigator for the Nevada Board of Pharmacy, and Samuel McCord, director of nursing practice for the Nevada Board of Nursing, made an unannounced visit to Breathe Bar stating that there had been a complaint filed regarding questionable practices at the facility which is owned by Amy Burkett. Ms. Burkett is the owner and founder of Breathe Bar, and was present for the site visit. Dr. Chen was not present for the site visit. In

1 support of this objection, the statement of Ms. Burkett regarding her recollection
2 of the events that took place that day is attached as **Exhibit A**. It was relayed
3 to her that the complaint was not made by any patient or the result of any
4 patient harm, but likely a competing business in town, however, Mr. Depczynski
5 and Mr. McCord did not provide any further details regarding the identity of the
6 person who filed the complaint. Ms. Burkett provided information regarding
7 Breathe Bar practices with discussion of how they operated the medical
8 treatments at Breathe Bar. At the resolution of the meeting, apparently it was
9 deemed inappropriate that Ms. Burkett had keys to the treatment room and keys
10 to the lock securing the medications utilized for treatment of patients, and the
11 gentlemen confiscated the medications from the locked storage unit and left
12 with the medical inventory. Apparently, however, sometime later, the
13 gentlemen returned to the Breathe Bar and returned the medications stating
14 that they shouldn't have taken the inventory. On information and belief,
15 however, the keys to the storage lock and IV fluid bags were confiscated and
16 Ms. Burkett was instructed that Dr. Chen, as medical director and physician in
17 charge of the medications, would need to contact Mr. Depczynski to set up a
18 meeting where Dr. Chen could obtain the keys in person.

19 After several attempts, Dr. Chen set up a meeting between him, Mr.
20 David Wuest, the executive secretary of the BOP, Ms. Yen Long, the deputy
21 secretary of the BOP, and Ms. Burkett on January 3, 2020 to discuss their
22 concerns and repossess the keys to the medications. At that meeting, the
23 representatives for the Board of Pharmacy stated that their concern was related
24 to Ms. Burkett having access to the keys for the locked medications as she was
25 not medically trained or licensed. They also expressed concern regarding the
26 nursing staff having access to the medications, in particular, if Dr. Chen wasn't
27 present on site for the entire treatment period. Dr. Chen reassured Mr.
28 Depczynski and Mr. Wuest that they maintained high levels of security and

1 safety with regards to the medications, and if they felt this was not the case,
2 then they would make any recommended changes they suggested in order to
3 be in compliance. They also detailed to the Board representatives the typical
4 treatment course for patients at Breathe Bar.

5 Dr. Chen was asked by Amy Burkett to be medical director of Breathe Bar
6 to help assist in developing an intravenous fluid hydration and treatment
7 program for her business. She felt that he was an optimal candidate because of
8 his clinical background in anesthesiology. As a board certified clinician that has
9 treated over 20,000 patients with intravenous fluids for resuscitation of all
10 clinical situations in his 14-year career, and utilized many forms of medications
11 in those treatment protocols, it was felt that Dr. Chen could provide the proper
12 skill set and guidance for her to safely and properly start a program at her
13 health institution. Thus, in May of 2019, Dr. Chen accepted her offer and began
14 developing and establishing protocols to ensure that patients coming through
15 Breathe Bar for treatment would get the same level of care that they could come
16 to expect in a hospital or surgery center setting.

17 As the medical director, Dr. Chen developed all the necessary intake
18 forms, questionnaires, consent forms including HIPPA compliance, order forms,
19 progress notes, and informational packets for each patient, which were adapted
20 from hospital forms. He also established relationships with accredited
21 distributors of medical supplies and medications/IV fluids and opened an
22 account to procure all the necessary inventory. Dr. Chen established practice
23 protocols for sterility, safety, and compliance that fell in line with those one
24 would see at a hospital or surgery center. And for the first two months of trialing
25 the launch of services at Breathe Bar, Dr. Chen was the sole provider and
26 caretaker for all patients receiving treatment at the facility.

27 As patient demand grew, Ms. Burkett asked to expand services by
28 recruiting registered nurses to help with the intake and treatment portions of the

1 therapy. All nurses who were employed by Ms. Burkett had been nurses that
2 Dr. Chen directly worked with or were familiar with through his years as an
3 anesthesiologist in the community. They only hired highly competent nurses
4 who had excellent records of service and provided the highest quality care
5 throughout their careers. They were specifically mentored and proctored by Dr.
6 Chen to ensure that the quality measures in place were achieved for each and
7 every patient. Dr. Chen has provided a copy of the nursing guidelines and
8 operating procedures that each new hire was given for reference regarding the
9 expectations he had for them at Breathe Bar, attached hereto as **Exhibit B**.

10 Based on the guidelines, they maintained strict protocols for how patients
11 were evaluated and treated. In summary, all patients would be evaluated and
12 answer a questionnaire by Dr. Chen and/or a nurse. They would discuss
13 treatment options, benefits, and risks of each treatment option, provide informed
14 consent, and answer any questions from the patient. If nurses provided the
15 initial intake actions, Dr. Chen would go over the findings with each nurse and
16 come up with a treatment plan tailored to the individual needs of every patient.
17 An order form would be filled out and signed by Dr. Chen as the ordering
18 physician, and the nurse would carry out the order and monitor the patient
19 during the infusion treatment. Once the treatment was complete, a final
20 evaluation of the patient was done, and discharge home instructions were
21 provided on what to expect and issues to report. Once the patient was
22 discharged, they would follow-up with the patients the following day to ensure
23 there were no issues or complications.

24 Reviewing the allegations contained in the Board of Pharmacy's notice
25 letter, the "factual allegations" are objected to as being incomplete, erroneous
26 and the same are denied. The following is to provide further clarification and to
27 correct erroneous statements.

28 ///

1 The nurses and/or Dr. Chen provided patient assessments using the
2 designated intake form which provided a clinical history for each patient. The
3 nurses would communicate with Dr. Chen regarding the assessment for each
4 patient prior to any treatments, and once a clear and defined plan was created,
5 an order would be given on the order sheet which was signed by the physician
6 and carried out by the physician or nursing staff. The false, incomplete,
7 erroneous, and misleading statement is that these orders and communications
8 only occurred via telephone or text, and not in person. Text and telephone
9 messages were used to communicate that patients were ready for their
10 treatment and initial discussions were made via those methods if Dr. Chen was
11 not directly present at the time. Dr. Chen would always come to the facility to
12 sign off on the intake forms, discuss any needs regarding the patient, and sign
13 off on the orders for treatment. This can be verified in all the patient records and
14 charts. It is not unusual that discussions and treatment plans occur over
15 telephone or text messaging. For a physician taking call in the community,
16 there are countless occasions where a nurse will evaluate a patient, call the
17 physician to discuss any issues, and request orders which would be given via
18 telephone or text and signed at a later time. In these instances, physicians are
19 not present on site during these discussions nor when executing an order for
20 the nurse to complete.

21 Dr. Chen was the primary caregiver for patients when this program was
22 initiated, and thus assessed, examined, treated, and followed-up with every
23 single patient coming through Breathe Bar. When nurses were added to the
24 care team at Breathe Bar, they were expected to follow guidelines for treatment
25 consistent with their nursing requirements. They may have provided initial
26 assessments but contacted Dr. Chen for each patient to discuss and receive
27 orders, and Dr. Chen would be in person to sign orders and verify information
28 gathered by the nurses as evidenced in each patient's medical record. Each

1 patient was counseled by Dr. Chen or the nursing staff, and they knew that at
2 any time, he could be contacted and be present for any issues or questions that
3 arose. See **Exhibit B** for the applicable operating procedures.

4 Dr. Chen had knowledge and authorized the RNs at Breathe Bar to
5 provide care and treatments to the patients after a thorough evaluation,
6 discussion, and formulation of a safe and adequate plan. Orders were signed
7 and given to provide specific medications and treatments and are readily
8 available for review in the patient records. Of note, the Board of Nursing
9 conducted an investigation of the nurses at Breathe Bar which was initiated by
10 Samuel McCord. **Exhibit C** shows copies of letters which include the Board of
11 Nursing Notice of Investigation, the reply from the nursing staff, and the ultimate
12 decision for the Board of Nursing that they were not practicing independently
13 without supervision and were not practicing outside of their scope, and thus the
14 case was dismissed. Those conclusions support the denial of the allegations
15 and show that the care was provided in accord with state and national
16 standards.

17 Regarding allegations about the role of Ms. Burkett, she was never
18 directed to handle any of the medication inventory. Dr. Chen was in charge of
19 ordering, stocking, safeguarding, and prescribing the medications. Ms. Burkett
20 had a key to the medication/treatment room, and a key to the lock, but as owner
21 of the facility and as the employer, it was felt that this was appropriate. The
22 nurses had access to the medications to obtain them, but only after receiving an
23 order from the physician. And Dr. Chen kept inventory of all the medications to
24 account for all usage on a weekly basis to ensure there was no issues with
25 expiration or theft. Also, of note, the "dangerous drugs" referenced above
26 specifically dealt with Lactated Ringer's IV solution, ondansetron, ketorolac,
27 Vitamin B, and Vitamin C. From the standpoint of community health concern, it
28 was ensured that they utilized drugs that are commonly used with a high safety

1 profile and there was absolutely no utilization of any Schedule 2 medications.
2 Hydration fluid, anti-nausea medications, non-steroidal anti-inflammatory drugs,
3 and vitamins are widely accepted as being safe, have minimal risks, and
4 patients were screened for risk factors before any treatment. As stated earlier,
5 Dr. Chen has practiced for 14 years and conducted over 20,000 intravenous
6 fluid and medication treatments to patients, and with those particular fluids and
7 medications, has never encountered any issue of fluid overload, QT
8 prolongation (ondansetron), renal failure resulting from afferent vasoconstriction
9 (ketorolac), gastritis (ketorolac), or any other potential side effects from these
10 medications and vitamins. Dr. Chen allowed nurses to perform their duties
11 within their scope of practice, which includes assessing patients, treating
12 patients under physician orders, and administering medications to patients to
13 execute orders provided to them. Please refer to **Exhibit C** for the investigation
14 by the Board of Nursing which found that the nurses acted within their scope of
15 practice while working at Breathe Bar.

16 The multi-dose medication referenced in the Notice of Intended Action
17 was lidocaine 1% which was used as an anesthetic prior to placement of an
18 intravenous catheter. There were two vials that were uncapped and had not
19 been adequately dated and initialed by the practitioner as is expected for multi-
20 dose vials. This is not a practice that Dr. Chen permitted; however, it was an
21 error that once made aware, was addressed, and taken care of. Dr. Chen
22 reminded both nursing staff and himself of the importance to date and initial
23 when a multi-dose vial is opened, and to discard within 28 days of opening. This
24 was not permitted, and the lidocaine 1% is the only multi-dose medication used
25 at Breathe Bar.

26 Dr. Chen offers the above explanation and attached documents to correct
27 the misinformation and the vague, incomplete, erroneous, and unclear
28 allegations made against Dr. Chen. Allegations that he engaged in actions

1 constituting "unprofessional conduct or conduct contrary to the public interest"
2 and that he "violated, attempted to violate, assisted or abetted in the violation of
3 or conspired to violate NRS statutes" are made against him without reasonable
4 basis and in contradiction of the true facts. Those true facts were not verified
5 before these allegations were made against Dr. Chen. At no point during the
6 investigation did anyone from the Board of Pharmacy ask to see how a typical
7 interaction and care for a patient would take place, nor did they witness any
8 normal operating procedures at Breathe Bar. Secondly, there was no
9 attempt or discussion of any opportunity for improvement or reconciliation of
10 issues that were found. Dr. Chen serves on multiple peer review boards and
11 serves as the chair for that committee at Saint Mary's Regional Medical Center,
12 and knows that it has always been customary for any allegations to be verified
13 either by direct witness or obtaining first-hand testimony of the actions in
14 question. Once this was achieved, it was also customary to specifically speak to
15 person in question directly to get their point of view, and if findings were
16 accurate regarding deficits in the actions, there would be an opportunity for the
17 practitioner to make corrective actions without punitive consequences. Only
18 after repeated episodes would a peer review committee escalate the issue to a
19 level of potential reprimand and punishment. This practice is also consistent
20 with national accrediting bodies like the Joint Commission (JCAHO) and
21 Accreditation Association for Ambulatory Health Care (AAAHC) which oversee
22 operations and compliance of hospitals and surgery centers, respectively.
23 During these direct observation surveys, if deficits are found, the hospitals or
24 surgery centers are given the opportunity to address and rectify any
25 circumstances they deem substandard and would not be punitive without giving
26 an opportunity for correction. Unfortunately, it does not feel that Dr. Chen has
27 been given the same opportunity to correct any perceived deficits to the
28 satisfaction of the Board of Pharmacy. Instead, he is being asked to defend

1 himself to the Board for these "factual allegations" which suggest that he has
2 been derelict of his duty as a medical professional and threaten his standing
3 with the Board.

4 In closing, Dr. Chen is a native Nevadan and born and raised in Reno.
5 He understandably takes great pride in the city he grew up in and sees his
6 service in the medical community as an opportunity to give back to a community
7 that has given him so much. In his 15-year medical career, he has had a
8 spotless professional record, with no claims against him, being in good standing
9 at all affiliated hospitals and surgery centers, and no issues with any of the
10 Boards for which he serves as a member. He has served in many leadership
11 roles in the community from Medical Director of Surgical Services and member
12 of the Medical Executive Committee at Northern Nevada Medical Center to
13 serving as Medical Director of Surgical Services, Chair of the Professional Peer
14 Review Committee, Chair of Pharmacy and Therapeutics Committee, Vice
15 Chief of Staff, and currently Chief of Staff and Governing Board Member at
16 Saint Mary's Regional Medical Center, and during these times, he has taken
17 pride in serving those positions with integrity, honesty, and responsibility. He
18 currently serves as clinical faculty at the University of Nevada School of
19 Medicine and at Oregon Health and Sciences University in Portland, Oregon in
20 the department of Surgery and Anesthesia, and he always emphasizes to future
21 physicians the importance of doing each patient right and doing no harm,
22 leading by example, and always putting humanity and humility first. He would
23 like the Board to know that he takes his roles and responsibilities as a medical
24 professional seriously and treats every patient as he would a family member.
25 He expects excellence of himself and of his care for each person he
26 encounters. To have these erroneous accusations presented against him is
27 objectionable as stated herein. He will present this case in person to the Board
28 on December 2nd, 2020.

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

3 **JURISDICTION**

4 **I.**

5 Respondent admits the allegations contained in paragraph I of the Notice
 6 of Intended Action and Accusation.

7 **FACTUAL ALLEGATIONS**

8 **II.**

9 Respondent admits the allegations contained in paragraph II of the Notice
 10 of Intended Action and Accusation.

11 **III.**

12 Respondent admits the allegations contained in paragraph III of the
 13 Notice of Intended Action and Accusation.

14 **IV.**

15 Respondent admits the allegations contained in paragraph IV of the
 16 Notice of Intended Action and Accusation.

17 **V.**

18 Respondent denies each and every allegation contained in paragraph V
 19 of the Notice of Intended Action and Accusation.

20 **VI.**

21 Respondent denies each and every allegation contained in paragraph VI
 22 of the Notice of Intended Action and Accusation.

23 **VII.**

24 Respondent denies each and every allegation contained in paragraph VII
 25 of the Notice of Intended Action and Accusation.

26 **VIII.**

27 Respondent denies each and every allegation contained in paragraph VIII
 28 of the Notice of Intended Action and Accusation.

IX.

Respondent denies each and every allegation contained in paragraph IX of the Notice of Intended Action and Accusation.

X.

Respondent denies each and every allegation contained in paragraph X of the Notice of Intended Action and Accusation.

APPLICABLE LAW**XI.**

Respondent denies that the statutes contained in paragraph XI of the Notice of Intended Action and Accusation were violated.

XII.

Respondent denies that the statutes contained in paragraph XII of the Notice of Intended Action and Accusation were violated.

XIII.

Respondent denies that the statute contained in paragraph XIII of the Notice of Intended Action and Accusation was violated.

XIV.

Respondent denies that the statute contained in paragraph XIV of the Notice of Intended Action and Accusation was violated.

XV.

Respondent denies that the statute contained in paragraph XV of the Notice of Intended Action and Accusation was violated.

XVI.

Respondent denies that the statute contained in paragraph XVI of the Notice of Intended Action and Accusation was violated.

XVII.

Respondent denies that the statutes contained in paragraph XVII of the Notice of Intended Action and Accusation were violated.

XVIII. (sic)

FIRST CAUSE OF ACTION

Unlawful Access and Possession of Dangerous Drugs (Statutory Violations)

XIX.

Respondent denies each and every allegation contained in paragraph XIX of the Notice of Intended Action and Accusation.

SECOND CAUSE OF ACTION

Unlawful Access and Possession of Dangerous Drugs (Unprofessional Conduct)

XX.

Respondent denies each and every allegation contained in paragraph XX of the Notice of Intended Action and Accusation.

THIRD CAUSE OF ACTION

Unlawful Administration of Dangerous Drugs – No Bona Fide Therapeutic Relationship and No Authority to Determine Medical Necessity

XXI.

Respondent denies each and every allegation contained in paragraph XXI of the Notice of Intended Action and Accusation.

FOURTH CAUSE OF ACTION

Failure to Follow Procedures Following Breach of the Seal of a Multi-Dose Injectable Container

XXII.

Respondent denies each and every allegation contained in paragraph XXII of the Notice of Intended Action and Accusation.

FIFTH CAUSE OF ACTION

Controlled Substance Registration Inconsistent with the Public Interest

XXIII.

Respondent denies each and every allegation contained in paragraph XXIII of the Notice of Intended Action and Accusation.

AFFIRMATIVE DEFENSES

Respondent states his Affirmative Defenses as follows:

First Affirmative Defense

Petitioner has failed to state a claim upon which any professional discipline or sanction can be based.

Second Affirmative Defense

The incidents alleged in the Notice of Intended Action and Accusation, and the resulting damage, if any, which this Respondent denies, was caused by the acts of third persons other than Respondent and who are not agents, servants or employees of this Respondent.

Third Affirmative Defense

Respondent did not violate any of the statutes contained in Petitioner's Notice of Intended Action and Accusation.

Fourth Affirmative Defense

Petitioner has failed to provide any information or evidence to prove by a preponderance of the evidence that Respondent violated any of the statutes contained in Petitioner's Notice of Intended Action and Accusation.

Fifth Affirmative Defense

Petitioner has failed to establish via expert affidavit or declaration that Respondent committed malpractice in any manner or violated any additional statutes under NRS 6309 *et al.*

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1 WHEREFORE, Respondent prays that the Nevada State Board of
2 Pharmacy determines that Respondent met all applicable standards of care and
3 followed all applicable statutes and did not violate the same.

4 DATED this 8th day of July, 2020.

5 LEMONS, GRUNDY & EISENBERG
6 Attorneys for Respondent
7 Jeff Chen, M.D.

8 BY: 

9 EDWARD J. LEMONS, ESQ.
10 Nevada Bar No. 699
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CERTIFICATE OF SERVICE

I declare that I am an employee of LEMONS, GRUNDY & EISENBERG, and that I am over the age of 18 and not a party to the within action. My business address is 6005 Plumas Street, Third Floor, Reno, NV 89519.

On this date I served a true and correct copy of the ***Answer and Notice of Defense*** by mailing via U.S. Mail to the following:

J. David Wuest, R.Ph, *Executive Secretary*
NEVADA STATE BOARD OF PHARMACY
985 Damonte Ranch Parkway, Suite 206
Reno, Nevada 89521

Dated: July 8, 2020

A. Sellman

INDEX OF EXHIBITS

No.	Description	No. Pages
A.	Statement of Amy Burkett	1
B.	Breathe Bar Nursing Guidelines and Operating Procedures	5
C.	Board of Nursing investigation letters to nurses Natisha Zevnick and Natalie Fuller at Breathe Bar; reply letters from Nurse Zevnick and Nurse Fuller; Board of Nursing decision letters to nurses Zevnick and Fuller	8



777 S. Center Street Suite 201 Reno, NV 89501 775.232.0449 info@renobreathebar.com

To whom it may concern:

In regards to the visit on January 19th by The Nursing Board and Pharmacy Board this is my recount of what happened.

3 Individuals walked into Breathe Bar around 10:30am unannounced. They told me they were doing a courtesy check because of a complaint. Mr. Sam McCord from the Nursing Board handed me a Nursing magazine and told me that in order to be compliant, we had to have a Doctor or Nurse practitioner on site for IVs to be administered. As Dr. Chen and I were told he could be off site but in constant contact with the nurse performing the IV through TigerText a HIPPA certified medical texting app, Facetime or on the phone. I asked both Mr. McCord and Mr. Joe Depczynski which was the exact statute and they were not sure which was lawful or unlawful. They proceeded to tell me what I am doing is unlawful as stated in the article written by Mr McCord. They told me I needed to cease and desist my business immediately. They then asked me to show them the IV treatment room and inspected it thoroughly. When Mr. Depczynski asked me for the key to the refrigerator that held the vitamins, Zofran and Ketorolac I got them from our locked cabinet and let him inspect the meds. After looking at the meds he told me he would need to confiscate said meds and all LR bags I had in the room too. He loaded everything up into a box and took it out of Breathe Bar at approximately noon. He then came back to Breathe Bar around 1:30 with the box of meds and replaced them into the refrigerator and kept the LR and also took the refrigerator key when he left the second time. As my business is still on cease and desist, 4 of the nurses received subpoenas for records for the time they were working with Breathe Bar. After 4 months of waiting, they received full release of all charges by the Board of Nursing. I was forced to remove IV Hydration from Breathe Bar because of this proven "grey area" that is not yet in a NRS for our area.

Dr. Chen did the majority of IVs at Breathe Bar, always with the utmost professionalism. His kind and caring bedside manner always made our customers feel safe and taken care of. His charts were impeccable and thorough. It is disheartening that so many "grey areas" prevented my business from continuing to provide IV Hydration. The one service Dr. Chen and I hoped to provide for our community.

With Regards,

Amy Burkett
Owner, Breathe Bar

Welcome to the Breathe Bar Hydration and Wellness Team!

Greetings, I just wanted to introduce myself and explain the goals of our team here at Breathe Bar. Amy Burkett, the owner, has established an amazing establishment for rest, relaxation, rejuvenation, and health at Breathe Bar. She has asked me to serve as Medical Director to help develop and oversee IV hydration therapy and wellness. My background is that I am an anesthesiologist who has worked in town for 10 years, however, like Amy, I am a native and a local. When Amy asked if I would be interested in joining the team, I thought it would be a great opportunity to work with some different people than what I normally deal with, and hopefully it would allow me to see a different way to help people in the community.

My mission statement for our Breathe Bar Hydration and Wellness Team is as follows:

To provide a consistent, exceptional experience that strengthens trust and confidence with our patients, their families, and the community.

I want to make sure every patient experience is of the highest quality and safety, and I am grateful that you have joined the team to help achieve this goal. Even though we are a business in Midtown, I do have some expectations similar to those that we see in the medical arena. My core principles are listed below:

- **Integrity:** We will strive to provide the best and most honest care to each patient. We will practice in a manner which we would expect for each of our own family members. If we have that mindset, we will always provide first class care for all in the community.
- **Professionalism:** We will maintain proper codes of conduct and dress at all times as we are representatives of the medical community as a whole. We also represent Breathe Bar and have a duty to be the best possible stewards for the business and community.
- **Responsibility:** We will practice in a manner that is always above board and work towards achieving a highly reliable medical practice. We will abide by all safety guidelines published by respected medical organizations like the World Health Organization (WHO) and others. We will hold each other accountable to always choose the right.
- **Confidentiality:** We will always respect each individual's privacy and protect their information as we would any patient we care for in the community.
- **Joy:** I want every team member to be happy and enjoy what they are doing. We chose to accept this role because I believe we all wanted to help people, but in a different way than what we are accustomed to. I want this to be a pleasant experience, as our happiness and enthusiasm is palpable and transferable to those that we help!



Patient Intake Forms

- Each patient will receive a patient intake form which will include a demographics and patient history forms, informed consent, HIPAA statement, patient informational sheet, physician order sheet, and progress notes for the procedures.
- For the demographics sheet, important to just ensure that the patient has their name and contact information (i.e. phone number), as we will follow-up with the patients the following day to see how their treatment went.
- For the history intake form, please review all pertinent history, medications, and allergies with the patient. For vital signs, please either document it on the sheet, or else keep a copy so that I can fill in the vitals on my assessment.
- For the informed consent, ensure that each line is initialed and that the patient signs the final sheet. You will also sign the final sheet as well, and I will cosign as well.
- For the HIPAA sheet, inform the patient that we will keep their records private, and they have access to them at any time. Have them sign this sheet as well.
- For the patient orders sheet, we will review the patient history and medical conditions and what the patient requests for treatment. After discussion, I will provide you with an order that you will fulfill for that particular patient. Remember, what the patient requests vs. what we decide and agree upon for treatment may be different. Our order sheet will reflect what we actually decide is best for the patient during their care. I will sign the order sheets and either you or me will fill out the "reviewed by" portion depending on who takes out the medications.
- For the Progress Note, I made sheets that are standardized. Please complete the forms as thoroughly as possible. Please ensure that you sign and date and time the progress notes as these are part of the patient's treatment course and documentation is reflective of what actually happens with the patients.
- For the patient informational sheets, please remove from packet and give to each patient to take home. Notify each patient that we plan on reaching out to them at some point after the treatment to ensure that their care was up their expectations.

IV placement and infusions/IM injections

- Once the intake forms are received and we have reviewed the patient's medical history and developed a treatment plan, I will give orders for what each patient will need. At that point, we begin the treatment phase.
- We shall treat every patient as if we were taking care of them in the hospital, surgery center, or outpatient setting, meaning that we will ensure the same sterility, and precautions as we would in a medical setting.
- Hand washing: either wash your hands with soap and water per WHO recommendations or use the sterilizing hand gel *prior to* and *after* each interaction with a patient. After washing your hands, gloves are provided and I request that you use them for each patient during their care.

- Please prep each patient at minimum with alcohol preps before placing an intravenous catheter, or intramuscular injection. Chloroprep sticks will be provided in the IV start kits, and this is superior to the alcohol wipes, so please utilize this as a first option for the IV placement. If multiple attempts are required for a catheter placement, alcohol preps may be used.
- Once an IV is established, ensure that all sharps are placed in the sharps container, and all blood stained items are disposed of in the red hazard bags. Regular trash can be placed in the trash canister.
- Secure IVs as you are comfortable with, but ensure there is adequate fluid flow. Once you start an IV infusion, start with a free flow and monitor for 3-5 minutes to ensure that patient does not have a reaction to the fluids or having difficulty with their IV. Once they have shown the ability to tolerate, you can infuse quicker with the pressure bag if the patient wants a quicker treatment.
- If you have difficulty with IV placement, and it requires more than two attempts, I request that you notify me and I prefer to place the IV at that point in time. Please note that you will still get credit for taking care of the patient and be reimbursed for your care, but I just want to ensure that the patient has a positive experience.
- If medications are ordered and to be injected, please draw up each drug sterily (prep the vial with alcohol before drawing up with a new sterile filter needle and syringe) and deliver it in the selected port slowly (over 15 seconds) once it has been scrubbed with an alcohol prep. Please monitor closely over the next 15 minutes to ensure there is no adverse reactions or symptoms reported by the patient.
- If there is an allergic reaction to any medication, please notify me immediately, I will evaluate. If needed, we have epinephrine in the medication refrigerator.
- IM medications should be drawn up sterily and delivered sterily similar to the procedures noted above. Again, please use the filter needle for the glass vials.
- Once the treatment is complete, remove the IV and place all blood stained items in the red hazard bags, and the rest of the trash in the regular trash bin as noted above. Ensure that there is adequate hemostasis and provide bandages or compression bandages as needed.
- Please discuss what to expect with regards to potential side effects such as bruising and/or swelling, bleeding, etc.
- At the end of each of your shift, please check the equipment stock and fill up as needed. If you need something that we are out of, please let me know, and I will order them. Also, if there are items that make your life easier, let me know as well and I will see if I can get them.

Medications

- For the medications, we will NOT be utilizing any Scheduled drugs (i.e. opioids). From the injectable medications standpoint we will only utilize Zofran (a nausea medication) and Toradol (an anti-inflammatory medication). We may consider adding an antacid medication (Ranitidine) ranitidine in the future. These are given via IV at the dose that I prescribe to you. The major medication for which I may make an adjustment is Toradol based on the patient's age and comorbidities. At our proctoring sessions, I will go over each drug with you, their side effects to look for, and when we would consider not giving the medication.
- For vitamins, we have Vitamin B12, Bcomplex, and C currently, but will see if we want to add any other supplements and vitamins at a later time. These are okay to inject both IM or IV, though we prefer the IM route because it remains in the system a little longer. Again, we will review the risks and benefits of these vitamins at our proctoring session and go over what to expect.
- All medications and vitamins need to be locked up in the refrigerator, and the key will be kept in a safe place with Amy and I have a spare key as well. Please take note of expiration dates for ALL medications before you deliver them.
- I expect everyone to practice the READ mnemonic when administering medications:
 - o R- Review every administered drug to make sure it is correct
 - o E- Expiration date, ensure it is valid
 - o A- Administer according to the route prescribed
 - o D- Dosing, ensure that you have the correct amount
- If medications are running low, please notify me directly, I will need to order from our distributor which takes about 3 days.
- IV bags will be brought in weekly and kept in the IV room, I will bring in the amount that is scheduled for the week. Extras will be stored in my office at work, so let me know if extra is needed and I will bring it in but we have a good estimate based on Vagaro scheduling for the week.

Scheduling/Communications

- All scheduling will take place on Vagaro which Amy will set up for you once you are onboarded. Remember, you will not be able to put on the schedule until we complete the two proctored patients so that I can evaluate and provide feedback.
- All schedules will open up for filling once I have determined my availability for the week and I try to do this 2 weeks in advance. It will be a first come first serve basis. We will mostly have weekend slots available for work as I still have clinical duties during the week several weeks throughout the year.
- All communications not patient related can go through normal text, my number is . All communications regarding PATIENT CARE must go through TigerText, which is our HIPAA compliant app.

- I find that the best flow is to text me when the patient is completing the intake form as I am usually 5 minutes away from Breathe Bar. I will head up, evaluate the patient with you, sign the orders, and you can complete the tasks necessary.
- Once completed, notify the front desk of what procedures you complete for the day and you will receive credit. Amy handles all payroll and payment aspects, so direct any questions regarding that stuff to her.

Essentially, these are the basics to get started. Again, welcome to the Breathe Bar team! If you have any questions, please don't hesitate to ask during our proctoring sessions, or text/call me anytime. I am available to help you out and hopefully you have fun doing something a little different than the typical patient care.

Nevada State Board of NURSING

January 27, 2020

NOTICE OF COMPLAINT/ INVESTIGATION

Natisha Zevnick
9350 Double R Blvd. 3018
Reno, NV 89521

Re: Complaint submitted by Board staff

Dear Ms. Zevnick:

On December 19, 2019, the Nevada State Board of Nursing Board staff conducted a site survey at Reno Breathe Bar and the findings revealed the following:

On or about October 15, 2019, through December 15, 2019, while working as a Registered Nurse at Reno Breathe Bar, you allegedly accessed and possessed IV fluids without authorization. You also practiced beyond scope by administering IV fluids to patients who had not been seen and examined by a licensed practitioner.

Should these allegations be substantiated, you may have violated the following statutes and/or regulations of the Nevada Nurse Practice Act including but not limited to, NRS 632.347 (1)(g) unprofessional conduct, and/or NAC 632.89 (2) practice beyond scope, (21) obtain, possess, furnish prescription drugs without authorization, and/or (27) customary standards of practice.

Pursuant to NRS 233B.127(3) this letter is to notify you of the allegations and offer you the opportunity to respond if you so choose. The Board will conduct an independent investigation to determine if there has been a violation of the Nurse Practice Act.

Due to the potential for possible action against your license/certificate in Nevada, you need to be aware of the following. You have the right to consult with an attorney before you make any response to the allegations, or at any time during the course of an investigation however, it is not mandatory that you have an attorney represent you in any matters before the Board. Disciplinary action against you may affect a license/certificate issued by the Nevada State Board of Nursing

5011 Meadowood Mall Way, Suite 300, Reno, NV 89502-6576 (phone) 775-687-7700 (fax)
4220 S. Maryland Pkwy., Suite 300, Las Vegas, NV 89119-7524 (phone) 702-488-5800 (fax)
www.nevadanursingboard.org • 888-590-6726 • nursingboard@nsbn.state

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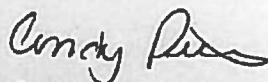
or any other state. In the event that there is formal disciplinary action taken by the Board, you may be charged for all financial costs related to investigation, settlement, and/or formal hearing of the complaint pursuant to NRS 622.400.

If you are a nursing assistant and the complaint is related to abuse, neglect, or misappropriation, the Board will investigate the alleged misconduct on behalf of the Bureau of Health Care Quality and Compliance. The Bureau may place a federal finding on your certificate in addition to any disciplinary action that may be taken by the Board.

Please return your response to the allegation(s) within (2) two weeks of receipt of this letter (as identified by the date upon which you sign the return receipt). Upon completion of the investigation, all information on file regarding the allegations will be reviewed to determine if further steps are appropriate. You will be contacted with the outcome of the investigation.

Thank you for your cooperation in this matter. If you have any questions, please do not hesitate to contact me in writing, or by telephone at 888-590-6726, ext. 77727.

Sincerely,
NEVADA STATE BOARD OF NURSING



Cindy Peterson, RN
Investigator

Enclosure: Nursing Fact Sheet

To the Nevada State Board of Nursing:

This letter is in response to the letter dated January 24, 2020 addressing the allegation brought against me.

There is an allegation that between the dates of October 15, 2019 and December 15, 2019 I "accessed and possessed IV fluids without authorization and practiced beyond my scope by administering IV fluids to patients who had not been seen and examined by a licensed practitioner".

To address the above allegation, I can acknowledge that I was briefly employed by Reno Breathe Bar for the purpose of completing research for a project assigned in a course in my RN to BSN program. My experience at Reno Breathe Bar, though minimal, provided me with insight surrounding available resources in this community that promote overall health and wellness from a holistic and integrative approach compared to those that focus primarily on the prevention and management of disease. Throughout the time frame stated above, I was only present at Reno Breathe Bar on two dates: October 22, 2019 and November 15, 2019. I participated in the care of a total of two patients, only one of which received IV fluids. I was under the direct proctoring supervision of the staff physician, and then, Medical Director, Dr. Jeff Chen during the entirety of each of these patient interactions. At no point in time did I access, possess, nor administer medications and/or IV fluids without the staff physician being physically present, without having received his direct orders after his examination of each patient, nor without acting in accordance with the policies and procedures established by the medical director. All documentation of care supports this.

I am willing and able to answer any further questions and address any other concerns that the Board of Nursing may have, but please understand that I know my scope of practice as a Registered Nurse and that I hold my licensure in the highest regards. I am proud to serve this community as a nurse, and I would not act nor have I acted in a way that compromises my ability to do so and jeopardizes my standing with the Nevada State Board of Nursing. I made a career change to become an RN, and my experience in serving patients in both the Trauma Intensive Care Unit and the Operating Room at Renown has not only reinforced every decision and sacrifice that I made in order to facilitate that change; it has also sparked a desire to continue my education and to grow in this profession. With that being said, please consider that my participation at Reno Breathe Bar was proctored and supervised by the medical director/staff physician, and in no way did I practice outside of my scope of practice as a Registered Nurse.

Sincerely,

Natisha Zevnick, RN 90706

Nevada State Board of
NURSING

April 17, 2020

Natisha Zevnick
Double R Blvd.
Reno, NV 89521

Re: Complaint submitted by Board staff

Dear Ms.Zevnick:

This letter is to inform you of the disposition of the Nevada State Board of Nursing regarding the complaint filed against you. After a thorough investigation and review of the evidence, the complaint has been closed. Once an investigation is closed, the contents of the investigation remain confidential. However, if new evidence is discovered, the matter may at any time be opened again and investigated further if circumstances so warrant.

Thank you for your cooperation in this matter. If you have any questions, please do not hesitate to contact this office in writing, or by telephone at 888-590-6726 ext. 77727.

Sincerely,
NEVADA STATE BOARD OF NURSING



Cindy Peterson, RN
Investigator

Nevada State Board of NURSING

January 27, 2020

NOTICE OF COMPLAINT/ INVESTIGATION

Natalie Fuller
Watt St.
Reno, NV 89509

Re: Complaint submitted by Board staff

Dear Ms. Fuller:

On December 19, 2019, the Nevada State Board of Nursing Board staff conducted a site survey at Reno Breathe Bar and the findings revealed the following:

On or about October 15, 2019 through December 15, 2019, while working as a Registered Nurse at Reno Breathe Bar, you allegedly accessed and possessed IV fluids without authorization. You also practiced beyond scope by administering IV fluids to patients who had not been seen and examined by a licensed practitioner.

Should these allegations be substantiated, you may have violated the following statutes and/or regulations of the Nevada Nurse Practice Act including but not limited to, NRS 632.347 (1)(g) unprofessional conduct, and/or NAC 632.89 (2) practice beyond scope, (21) obtain, possess, furnish prescription drugs without authorization, and/or (27) customary standards of practice.

Pursuant to NRS 233B.127(3) this letter is to notify you of the allegations and offer you the opportunity to respond if you so choose. The Board will conduct an independent investigation to determine if there has been a violation of the Nurse Practice Act.

Due to the potential for possible action against your license/certificate in Nevada, you need to be aware of the following. You have the right to consult with an attorney before you make any response to the allegations, or at any time during the course of an investigation however, it is not mandatory that you have an attorney represent you in any matters before the Board. Disciplinary action against you may affect a license/certificate issued by the Nevada State Board of Nursing

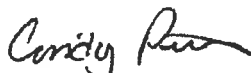
or any other state. In the event that there is formal disciplinary action taken by the Board, you may be charged for all financial costs related to investigation, settlement, and/or formal hearing of the complaint pursuant to NRS 622.400.

If you are a nursing assistant and the complaint is related to abuse, neglect, or misappropriation, the Board will investigate the alleged misconduct on behalf of the Bureau of Health Care Quality and Compliance. The Bureau may place a federal finding on your certificate in addition to any disciplinary action that may be taken by the Board.

Please return your response to the allegation(s) within (2) two weeks of receipt of this letter (as identified by the date upon which you sign the return receipt). Upon completion of the investigation, all information on file regarding the allegations will be reviewed to determine if further steps are appropriate. You will be contacted with the outcome of the investigation.

Thank you for your cooperation in this matter. If you have any questions, please do not hesitate to contact me in writing, or by telephone at 888-590-6726, ext. 77727.

Sincerely,
NEVADA STATE BOARD OF NURSING



Cindy Peterson, RN
Investigator

Enclosure: Nursing Fact Sheet



Natalie Fuller <eagernat@gmail.com>

Response to complaint/allegations by NV State Nursing Board

Natalie Fuller gmail.com>
 To: info@renobreathebar.com <info@renobreathebar.com>

Tue, Feb 4, 8:17 PM

February 4, 2020

Re: Complaint filed by Board Staff

To the NV State Nursing Board:

This letter is in response to the letter dated January 27th, 2020, and received by me on February 4th, 2020.

The allegations stated that between the dates of October 15, 2019 through December 15, 2019, while working as an RN at Reno Breathe Bar, that I accessed and administered IV fluids without prior authorization by a licensed practitioner. It states that I practiced beyond my scope.

In response to these allegations, I confirm that I was an employee of Reno Breathe Bar. Per the protocol issued by the Medical Director of Breathe Bar, and reviewed before start of employment, I discussed and reviewed each case with the staff physician. This was done either in person, via the phone, or via HIPPA compliant software Tiger Text. I worked directly under the physician's orders to administer IV fluids and medications. Under no circumstances did I provide care without the prior authorization of the staff physician, and all documentation of patient care reflects this. Neither was I ever in possession of IV fluids without the authorization of the staff physician. After reviewing and discussing each patient case, history, and assessment with the physician, orders were then received and completed.

I can attest that my file as a Registered Nurse is completely clean. I have been a nurse in this state for nearly 38 years, and have never received a complaint from the Board of Nursing. I hold my profession with very high regard, and would not do anything to jeopardize my license or standing with the Board. I have served this community since 1982, from the tiniest of patients in the NICU and Peds ICU, to my present full-time job in Outpatient Radiology.

I am available if there are any more questions, but I assure you that I did not possess IV fluids without authorization, nor did I practice independently while performing my duties at the Breathe Bar.

Should any of this practice be found concerning, I can honestly say that it was completely unintentional. As my first complaint, I sincerely hope that you take into consideration my nursing history and clean record. I am willing to make any necessary changes deemed necessary to stay in compliance with the Board.

Sincerely,

Natalie Jo Fuller
 RN License 12814

Nevada State Board of
NURSING

April 17, 2020

Natalie Fuller
Watt St.
Reno, NV 89509

Re: Complaint submitted by Board staff

Dear Ms. Fuller:

This letter is to inform you of the disposition of the Nevada State Board of Nursing regarding the complaint filed against you. After a thorough investigation and review of the evidence, the complaint has been closed. Once an investigation is closed, the contents of the investigation remain confidential. However, if new evidence is discovered, the matter may at any time be opened again and investigated further if circumstances so warrant.

Board staff would issue this statement of caution to you. You must ensure in the future that you practice within your scope as a Registered Nurse in regards to administering IV hydration at remote locations. Board staff recommends you review the article titled "IV Hydration Scope of Practice: What Registered Nurses Need to Know" in the September 2019 issue of the Nevada State Board of Nursing Nursing News. Archived issues of the publication can be obtained on the Board's website: www.nevadanursingboard.org.

Thank you for your cooperation in this matter. If you have any questions, please do not hesitate to contact this office in writing, or by telephone at 888-590-6726.

Sincerely,
NEVADA STATE BOARD OF NURSING



Cindy Peterson, RN
Investigator

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FILED

JUN 13 2019

BEFORE THE NEVADA STATE BOARD OF PHARMACY

NEVADA STATE BOARD
OF PHARMACY

NEVADA STATE BOARD OF PHARMACY,	)	CASE NO. 19-090-CS-S
)	
Petitioner,	)	NOTICE OF INTENDED ACTION
v.	)	AND ACCUSATION
)	
KIARASH L. MIRKIA, M.D.,)	
Certificate of Registration No. CS15197,)	
)	
Respondent.	/	

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

JURISDICTION

I.

The Nevada State Board of Pharmacy (Board) has jurisdiction over this matter and this respondent because at the time of the events alleged herein, Respondent Kiarash L. Mirkia, M.D., Certificate of Registration No. CS15197 ("Dr. Mirkia") held a Board-issued controlled substance registration.

FACTUAL ALLEGATIONS

II.

In April 2018, Dr. Mirkia owned and was the Medical Director of Mirkia IV, PLLC ("Mirkia IV").

III.

Mirkia IV provided intravenous rehydration treatments to patients in the Las Vegas area using registered nurses who work for the company either directly or on a contract basis.

IV.

Dr. Mirkia allowed Mirkia IV's office staff, including office manager Alex Zukovski ("Zukovski"), who is not a practitioner or registered nurse, to possess the information and keys necessary to access Mirkia IV's inventory of dangerous drugs.

V.

Under Dr. Mirkia's direction, Zukovski or other Mirkia IV office staff accessed and possessed Mirkia IV's inventory of dangerous drugs and provided supplies of dangerous drugs to registered nurses without a practitioner on site, without a practitioner's direct supervision, before Dr. Mirkia or any other practitioner examined the patient, and before there was a patient-specific and medication-specific written order for the patient and/or the medication.

VI.

Dr. Mirkia directed the registered nurses who were employed by or contracted with Mirkia IV to possess and control dangerous drugs from Mirkia IV's inventory, including storing them at their homes, without a practitioner on site, without direct practitioner supervision, without a patient-specific and medication-specific written order for the patient and/or medication. Dr. Mirkia allowed those nurses to possess and store dangerous drugs from Mirkia IV's inventory for up to three days at a time in anticipation that Dr. Mirkia might examine a patient and issue an order for administration.

VII.

Dr. Mirkia allowed registered nurses to transport the dangerous drugs he put into their possession and control without a patient-specific and medication-specific order.

VIII.

Dr. Mirkia generally had no contact—did not examine and did not establish a bona fide therapeutic relationship with the patient—until after one of Mirkia IV's registered nurses transported the dangerous drugs in his/her possession to the patient's location.

IX.

After completing an “examination” of the patient by telephone, Dr. Mirkia would approve, deny or modify a pre-determined order authorizing the patient to receive treatment using an electronic medical record (“EMR”) system.

X.

After Dr. Mirkia issued an order to administer medication to the patient, the registered nurse purportedly performed his/her own assessment.

XI.

Mirkia IV’s nurses were directed to upsell, and often upsold, additional medications to the patient beyond what Dr. Mirkia initially ordered.

XII.

When an RN was successful in upselling additional dangerous drugs to a patient, an “on call” practitioner purportedly was available to amend the patient’s order prior to administration.

XIII.

Dr. Mirkia purchased sterile compounded dangerous drugs from Fusion IV Pharmaceuticals, Inc., *dba* Axia Pharmaceuticals (“Fusion”), in Los Angeles, California.

XIV.

Fusion sold compounded sterile products to practitioners in Nevada, including Dr. Mirkia and/or Mirkia IV.

XV.

Fusion is not licensed in Nevada.

APPLICABLE LAW

XVI.

No person may possess a dangerous drug in Nevada without specific statutory authority to do so. *See* NRS 454.213, NRS 454.316, NRS 454.321.

XVII.

A practitioner can give a registered nurse limited authority to possess and administer dangerous drugs without the practitioner onsite by way of NRS 454.213(1)(c), which says in relevant part:

a drug or medicine referred to in NRS 454.181 to 454.371, inclusive, may be possessed and administered by . . . a registered nurse licensed to practice professional nursing or licensed practical nurse, at the direction of a prescribing physician, physician assistant licensed pursuant to chapter 630 or 633 of NRS, dentist, podiatric physician or advanced practice registered nurse, *or pursuant to a chart order, for administration to a patient at another location.*

NRS 454.213(1)(a)(*emphasis added*); see also NRS 639.100.

XVIII.

Chart orders must be written (NRS 454.223) and are patient-specific and medication-specific.¹

XIX.

“Except as otherwise specifically provided, every person who violates any provision of NRS 454.181 to 454.371, inclusive, is guilty of a misdemeanor.” NRS 454.356.

XX.

A practitioner must first establish a *bona fide therapeutic relationship* with a patient by examination before he or she can determine that a medication is medically necessary and direct and/or authorize a RN to possess and administer a dangerous drug on-site or issue a chart order for off-site administration of a dangerous drug to treat the patient’s medical condition. See NAC 639.945(1)(o) and NRS 454.213(1)(a).

¹ See NRS 639.004 “Chart order” means an order entered on the chart of a patient in a hospital, facility for intermediate care or facility for skilled nursing which is licensed as such by the Division of Public and Behavioral Health of the Department of Health and Human Services or on the chart of a patient under emergency treatment in a hospital by a practitioner or on the written or oral order of a practitioner authorizing the administration of a drug to the patient.

XXI.

[A] bona fide therapeutic relationship between the patient and practitioner shall be deemed to exist if the patient was examined in person, electronically, telephonically or by fiber optics . . . by the practitioner within the 6 months immediately preceding the date the practitioner . . . prescribes a drug to the patient and, as a result of the examination, the practitioner diagnosed a condition for which a given drug therapy is prescribed.

NRS 639.945(3).

XXII.

An outsourcing facility that is engaged in the compounding of sterile drugs in this State [Nevada] or for shipment into this State shall:

1. Obtain a license from the Board as a manufacturer in accordance with NRS 639.100 and 639.233;
2. Comply with the provisions of NAC 639.609 to 639.619, inclusive; and
3. Comply with all the requirements of 21 U.S.C. § 353b.

NAC 639.6915

XXIII.

“Supplying . . . medicines, substances or devices which are legally sold in pharmacies or by wholesalers, so that unqualified persons can circumvent any law pertaining to the legal sale of such articles” constitutes “unprofessional conduct and conduct contrary to the public interest.”

NAC 639.945(1)(g).

XXIV.

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).

XXV.

“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(1)(k).

XXVI.

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).

XXVII.

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).

XXVIII.

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

Unlawful Access and Possession of Dangerous Drugs - Statutory Violations

XXIX.

By allowing Mirkia IV's staff, including its office manager and its registered nurses, none of whom were practitioners and none of whom were licensed to possess or prescribe dangerous drugs, to operate Mirkia IV and/or to obtain, access, possess and store dangerous drugs when he was not on site, before he examined the patient and before he wrote a patient-specific order, Dr. Mirkia violated, or assisted and abetted his staff in violating, NRS 454.213(1), NRS 454.316 and/or NRS 454.356. Because of that conduct, which violates Nevada law and is

inconsistent with the public interest, Dr. Mirkia's controlled substance registration, Certificate of Registration No. CS15197, is subject to discipline pursuant NRS 639.210(12), NRS 453.236(1)(d) and NRS 453.241(1).

SECOND CAUSE OF ACTION

Unlawful Access and Possession of Dangerous Drugs – Unprofessional Conduct

XXX.

By allowing Mirkia IV's staff, including its office manager and its registered nurses, none of whom were practitioners and none of whom were licensed to possess or prescribe dangerous drugs, to operate Mirkia IV and/or to obtain, access, possess and store dangerous drugs when he was not on site, before he examined the patient and before he wrote a patient-specific order, Dr. Mirkia engaged, or assisted and abetted his staff to engage, in unprofessional conduct as defined in NAC 639.945(1)(g), (i), and (k). For that conduct, Dr. Mirkia's controlled substance registration, Certificate of Registration No. CS15197, is subject to discipline pursuant to NRS 639.210(4), NRS 453.236(1)(d) and/or NRS 639.255.

THIRD CAUSE OF ACTION

Purchasing Sterile Compounded Drugs from an Unlicensed Pharmacy

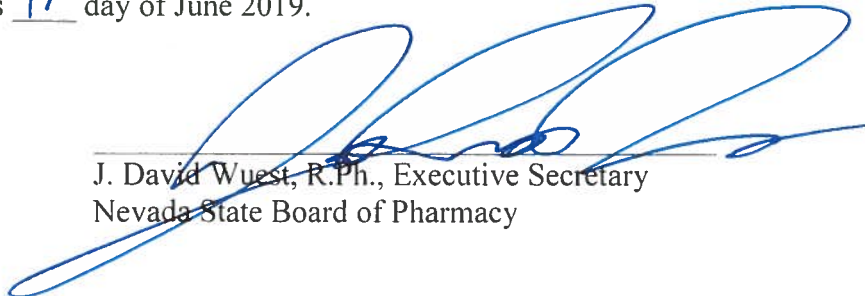
XXXI.

By purchasing sterile compounded dangerous drugs from a pharmacy not licensed with the Board, Dr. Mirkia violated, or assisted and abetted that pharmacy in violating, NRS 639.233, NRS 639.285 and/or NAC 639.6915. Because of that conduct, Dr. Mirkia's controlled substance registration, Certificate of Registration No. CS15197 is subject to discipline pursuant to NRS 639.210(4) and (12), NRS 453.236(1)(d); NRS 453.241(1) and/or NRS 639.255.

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

Signed this 17th day of June 2019.



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

NOTICE TO RESPONDENT

You have the right to show the Nevada State Board of Pharmacy that your conduct, as alleged above, complies with all lawful requirements. NRS 233B.127(3). You have the right to a hearing before the Board to answer the Notice of Intended Action and Accusation and present evidence and argument on all issues involved, either personally or through counsel. NRS 233B.121; NRS 233B.127(3); NRS 622A.300(1) and (3); NRS 639.241. To do so, you must complete and file of two copies of the Answer and Notice of Defense served herewith, to be received by the Board's Reno office located at 985 Damonte Ranch Parkway – Suite 206, Reno, Nevada 89521, within twenty (20) days of your receipt of this Notice of Intended Action and Accusation. NRS 639.320; NRS 639.243. Your failure to timely file an Answer and Notice of Defense constitutes an admission of the charges and waiver of the right to a hearing. NRS 639.244. If you fail to appear at the hearing and the Board finds that you were given sufficient legal notice of the hearing, the Board may accept the allegations as true and may proceed to consider the case and render a decision. NRS 622A.350.

BEFORE THE NEVADA STATE BOARD OF PHARMACY

NEVADA STATE BOARD OF PHARMACY,	)	CASE NO. 19-090-CS-S
)	
Petitioner,)	
v.)	
	)	STATEMENT TO THE
KIARASH L. MIRKIA, M.D.,	)	RESPONDENT
Certificate of Registration No. CS15197,	)	NOTICE OF INTENDED ACTION
	)	AND ACCUSATION
Respondent.	/	RIGHT TO HEARING

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

I.

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

II.

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

III.

The Board has scheduled your hearing on this matter for Wednesday, July 17, 2019, at 9:00 a.m. or soon thereafter. The hearing will occur at the Hilton Garden Inn, 7830 S. Las Vegas Blvd., Las Vegas, Nevada.

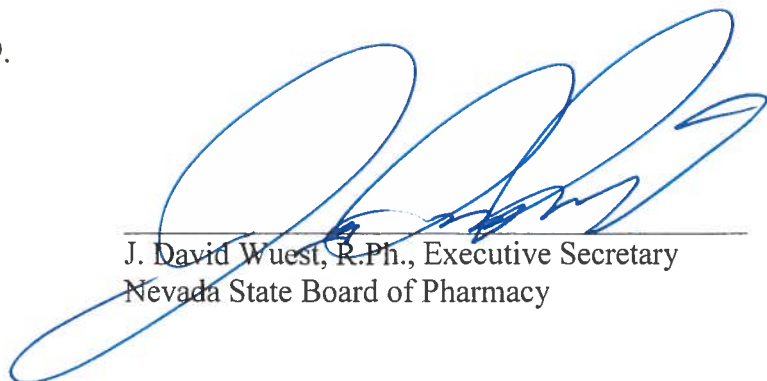
IV.

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

V.

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

DATED this 13th day of June, 2019.

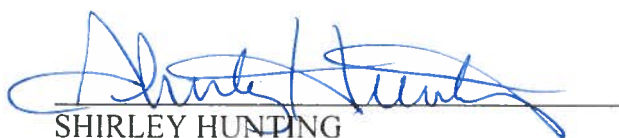


J. David Wuest, R.Ph., Executive Secretary
Nevada State Board of Pharmacy

CERTIFICATE OF SERVICE

I certify that I am an employee of the Nevada State Board of Pharmacy, and that on this 14th day of June, 2019, I served a true and correct copy of the foregoing document by Certified U.S. Mail to the following:

**Kiarash L. Mirkia, MD
1878 Morro Vista Drive
Las Vegas, NV 89135**



SHIRLEY HUNTING

FILED

MAR 20 2020

NEVADA STATE BOARD
OF PHARMACY

1 LEWIS BRISBOIS BISGAARD & SMITH LLP
 2 KEITH A. WEAVER
 3 Nevada Bar No. 10271
 4 MELANIE L. THOMAS
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 6385 S. Rainbow Boulevard, Suite 600
 7 Las Vegas, Nevada 89118
 8 Telephone: 702.893.3383
 9 Facsimile: 702.893.3789

10 Attorneys for Kiarash L. Mirkia, M.D.

11

12 BEFORE THE NEVADA STATE BOARD OF PHARMACY

13 NEVADA STATE BOARD OF	14 CASE NO. 19-090-CS-S
15 PHARMACY,	16 ANSWER AND NOTICE OF DEFENSE
17 Petitioner,	
18 vs.	
19 KIARASH L. MIRKIA, M.D.,	
20 Certificate of Registration No. CS15197,	
21 Respondent.	

22

23 KIARASH L. MIRKIA, M.D. ("Dr. Mirkia"), by and through his counsel LEWIS
 24 BRISBOIS BISGAARD & SMITH, LLP hereby submits his Answer and Notice of Defense.

25 JURISDICTION

26 I. Answering Paragraph I, Respondent objects to this paragraph as it calls for
 27 a legal conclusion; notwithstanding, Respondent admits that he held a Board-issued
 28 controlled substance registration, Certificate of Registration No. CS15197.

29 FACTUAL ALLEGATIONS

30 II. Answering Paragraph II, Respondent admits that he was the owner of
 31 Mirkia IV, PLLC, but denies the remainder of the allegations.

32 III. Answering Paragraph III, Respondent admits that Mirkia IV provided
 33 intravenous rehydration treatments to patients in the Las Vegas area using registered
 34 nurses who are independent contractors paid by 1099s, and denies that the registered
 35 nurses were directly employed.

1 IV. Answering Paragraph IV, Respondent admits that Alex Zukovski was the
2 office manager of Mirkia IV, and had information and keys necessary to access Mirkia
3 IV's inventory, and denies the remainder of the allegations as to any other office staff.

4 V. Answering Paragraph V, Respondent admits that Zukovski accessed and
5 provided supplies to registered nurses after notifying Respondent, who was at times
6 supervising remotely through the use of onsite cameras and a logbook, before
7 Respondent or any other practitioner examined the patient and before there was a
8 patient-specific and medication-specific written order for the patient and/or medication.
9 Respondent denies the remainder of the allegations, including those related to other
10 office staff.

11 VI. Answering Paragraph VI, Respondent denies these allegations.

12 VII. Answering Paragraph VII, Respondent admits that registered nurses were
13 permitted to possess and transport inventory up to the end of their shift when they were
14 required to return it to Mirkia IV.

15 VIII. Answering Paragraph VIII, Respondent admits that he would be on
16 videoconference with the patient and nurse listening, would obtain past medical history,
17 current medications, allergies and symptoms, would approve certain supplements. The
18 nurse would provide the vital signs and run down on the patient. The application
19 WhatsApp was utilized to perform these functions because it is encrypted.

20 IX. Answering Paragraph IX, Respondent denies that he examined the
21 patients by telephone, but admits performing exams on video-conference with the patient
22 and nurse present, and afterwards would approve, deny or modify the regimen the patient
23 selected when requesting the IV services.¹ Respondent admits that patients would select
24 packages for a desired regimen, but there would not be an order given until Respondent
25 approved of the desired regimen.

26
27 _____
28 ¹ The regimens were set forth on the

1 X. Answering Paragraph X, Respondent denies these allegations, as the
2 registered nurse performed their assessment of the patient, including obtaining vital
3 signs, prior to calling Respondent to examine the patient and obtain orders.

4 XI. Answering Paragraph XI, Respondent denies nurses were directed to
5 upsell, and often upsold, additional medications to the patient beyond what Respondent
6 ordered. If a registered nurse believed that additional treatment was needed, they would
7 contact Respondent for additional orders or receive direction to call emergency services.

8 XII. Answering Paragraph XII, Respondent denies these allegations.

9 XIII. Answering Paragraph XIII, Respondent admits to purchasing from Fusion IV
10 Pharmaceuticals on behalf of Mirkia IV, PLLC for a period of time before learning from the
11 Board of Pharmacy that they were not licensed in Nevada, at which time Respondent
12 discontinued the relationship.

13 XIV. Answering Paragraph XIV, Respondent admits that Fusion sold products to
14 Mirkia IV, but denies that products were sold to Dr. Mirkia individually. Respondent is
15 without sufficient knowledge or information to form a belief as to the truth or falsity of the
16 allegations contained therein as it relates to other "practitioners in Nevada," and on that
17 basis denies those allegations.

18 XV. Answering Paragraph XV, Respondent admits that he became aware
19 through the Board of Pharmacy that Fusion is not licensed in Nevada.

20 APPLICABLE LAW

21 XVI. Answering Paragraph XVI, Respondent objects to this paragraph as it calls
22 for a legal conclusion, for which no response is required.

23 XVII. Answering Paragraph XVII, Respondent objects to this paragraph as it calls
24 for a legal conclusion, for which no response is required.

25 XVIII. Answering Paragraph XVIII, Respondent objects to this paragraph as it calls
26 for a legal conclusion, for which no response is required.

27 XIX. Answering Paragraph XIX, Respondent objects to this paragraph as it calls
28 for a legal conclusion, for which no response is required.

1 XX. Answering Paragraph XX, Respondent objects to this paragraph as it calls
2 for a legal conclusion, for which no response is required.

3 XXI. Answering Paragraph XXI, Respondent objects to this paragraph as it calls
4 for a legal conclusion, for which no response is required.

5 XXII. Answering Paragraph XXII, Respondent objects to this paragraph as it calls
6 for a legal conclusion, for which no response is required.

7 XXIII. Answering Paragraph XXIII, Respondent objects to this paragraph as it calls
8 for a legal conclusion, for which no response is required.

9 XXIV. Answering Paragraph XXIV, Respondent objects to this paragraph as it
10 calls for a legal conclusion, for which no response is required.

11 XXV. Answering Paragraph XXV, Respondent objects to this paragraph as it calls
12 for a legal conclusion, for which no response is required.

13 XXVI. Answering Paragraph XXVI, Respondent objects to this paragraph as it
14 calls for a legal conclusion, for which no response is required.

15 XXVII. Answering Paragraph XXVII, Respondent objects to this paragraph as it
16 calls for a legal conclusion, for which no response is required.

17 XXVIII. Answering Paragraph XXVIII, Respondent objects to this paragraph
18 as it calls for a legal conclusion, for which no response is required.

19 FIRST CAUSE OF ACTION

20 **Unlawful Access and Possession of Dangerous Drugs—Statutory Violations**

21 XXIX. Answering Paragraph XXIX, Respondent objects to the extent that this
22 paragraphs calls for a legal conclusion, and denies the remainder of the allegations
23 generally and specifically.

24 SECOND CAUSE OF ACTION

25 **Unlawful Access and Possession of Dangerous Drugs—Unprofessional Conduct**

26 XXX. Answering Paragraph XXX, Respondent objects to the extent that this
27 paragraphs calls for a legal conclusion, and denies the remainder of the allegations
28 generally and specifically.

THIRD CAUSE OF ACTION

Purchasing Sterile Compounded Drugs from an Unlicensed Pharmacy

XXXI. Answering Paragraph XXXI, Respondent objects to the extent that this paragraphs calls for a legal conclusion, and denies the remainder of the allegations generally and specifically.

AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE

The Board's Complaint fails to state a claim on which relief may be granted.

SECOND AFFIRMATIVE DEFENSE

The Board's Complaint, and each cause of action therein, is barred by the doctrine of laches, estoppel, and the doctrine of unclean hands.

THIRD AFFIRMATIVE DEFENSE

Respondent denies each and every allegation of the Board's Complaint not specifically admitted or otherwise pled to herein.

WHEREFORE, Respondent prays for judgment as follows:

1. That all charges against him be dismissed;
2. For such other and further relief as may be deemed just and proper in these premises.

DATED: March 20, 2020

Respectfully submitted,

KEITH A. WEAVER
MELANIE L. THOMAS
LEWIS BRISBOIS BISGAARD & SMITH LLP

/s/ Melanie L. Thomas

By: _____
Attorneys for Kiarash L. Mirkia, M.D.

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