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NEVADA STATE BOARD OF PHARMACY  
**OFFICE OF THE GENERAL COUNSEL**

WRITER'S DIRECT DIAL: (775) 850-1440 • E-MAIL: [bkandt@pharmacy.nv.gov](mailto:bkandt@pharmacy.nv.gov) • FAX: (775) 850-1444

April 18, 2019

VIA CERTIFIED U.S. MAIL AND ELECTRONIC MAIL TO: [valoriedavidson@gmail.com](mailto:valoriedavidson@gmail.com)

Valorie Davidson  
 9375 Archibald Avenue – Suite 311  
 Rancho Cucamonga, CA 91730

**Re: CEASE and DESIST/CITATION: Unlicensed Prescribing and Dispensing**

Dear Ms. Davidson:

The Nevada State Board of Pharmacy (Board) has determined that you have prescribed and dispensed controlled substances and dangerous drugs for Nevada patients without a valid registration. This constitutes a violation of Nevada law, including NRS 453.226, NRS 453, NRS 639.100 and NRS 639.2813.

You are hereby ordered pursuant to NRS 639.2895(1) to CEASE and DESIST prescribing or dispensing controlled substances or dangerous drugs for Nevada patients. This letter shall serve as a CITATION pursuant to NRS 639.2895(2) for your unlicensed practice. The Board has assessed you an administrative fine of five thousand dollars (\$5,000.00) pursuant to NRS 639.2895(3).

You must pay this administrative fine within 30 days of receipt of this citation, or otherwise contact Board staff to request an alternative payment plan. Payment must be by *cashier's check, certified check or money order* made payable to "State of Nevada, Office of the Treasurer," to be received at the Board's Reno office, located at 985 Damonte Ranch Parkway – Suite 206, Reno, NV 89521.

You have the right to appeal this citation by submitting a written request for a hearing to the Board at the Board's Reno office no later than 30 days after receipt of this letter. *See* NRS 639.2895(2).

Please be aware that the forgoing does not preclude further investigation or the filing of criminal charges. If you have any questions, please do not hesitate to contact me at 775-850-1440 or [bkandt@pharmacy.nv.gov](mailto:bkandt@pharmacy.nv.gov).

Best regards,

A handwritten signature in blue ink, appearing to be "BKandt", is written over a blue circular stamp.

Brett Kandt  
 General Counsel  
 Nevada State Board of Pharmacy

**BEFORE THE NEVADA STATE BOARD OF PHARMACY**

|  |   |                          |
|--|---|--------------------------|
| <b>NEVADA STATE BOARD OF PHARMACY,</b> | ) | <b>CASE NO. 18-059-S</b> |
|  | ) |                          |
| <b>Petitioner,</b>                     | ) |                          |
| <b>v.</b>                              | ) | <b>STATEMENT TO THE</b>  |
|  | ) | <b>RESPONDENT AND</b>    |
| <b>VALORIE DAVIDSON,</b>               | ) | <b>NOTICE OF HEARING</b> |
| <b>Respondent.</b>                     | ) |                          |
|  | / |                          |

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

I.

Pursuant to the authority and jurisdiction conferred upon the Nevada State Board of Pharmacy (Board) by NRS 639.2895 and NRS 233B.121-.126, *inclusive*, a CITATION AND FINE was served upon Respondent Valorie Davidson (Davidson) alleging violations of Nevada law as set forth herein.

II.

It is unlawful to prescribe or dispense a controlled substance except as authorized by law. NRS 453.321(1)(a); NRS 639.100(1).

III.

A prescription for a controlled substance may be issued only by an individual practitioner who is authorized to prescribe controlled substances by the jurisdiction in which he is licensed to practice his profession. 21 CFR § 1306.03(a)(1). Every practitioner who prescribes or dispenses any controlled substance within this State shall obtain biennially a registration issued by the Board. NRS 453.226(1).

IV.

It is unlawful for any person falsely to represent himself as a practitioner entitled to write prescriptions in this State. NRS 639.2813(1).

## V.

Before a provider of health care who is located at a distant site may use telehealth to direct or manage the care or render a diagnosis of a patient who is located at an originating site in this State or write a treatment order or prescription for such a patient, the provider must hold a valid license or certificate to practice his or her profession in this State. NRS 629.515(1).

## VI.

Davidson has never been registered with the Board to prescribe or dispense controlled substances or dangerous drugs for Nevada patients.

## VII.

Davidson wrote approximately 4408 controlled substance prescriptions for Nevada patients from October 31, 2015, to October 31, 2018.

## VIII.

Davidson has prescribed controlled substances for Nevada patients without a valid registration. This constitutes a violation of Nevada law, including NRS 453.226, NRS 453.321, NRS 629.515, NRS 639.100, and NRS 639.2813. This also constitute a violation of 21 CFR § 1306.03.

## IX.

You have the right to show the Nevada State Board of Pharmacy that your conduct, as alleged above, complies with all lawful requirements. NRS 639.2895(2). You have the right to a hearing before the Board to answer the allegations and present evidence and argument on all issues involved, either personally or through counsel. NRS 233B.121. 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.

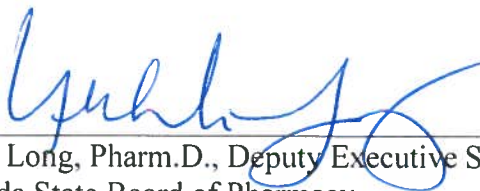
X.

**The Board has scheduled your hearing on this matter for Wednesday, July 17, at 9:00 a.m. or soon thereafter. The hearing will occur at the at the Hilton Garden Inn located at 7830 South Las Vegas Blvd., Las Vegas, Nevada.**

XI.

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.

DATED this 26 day of June, 2019.

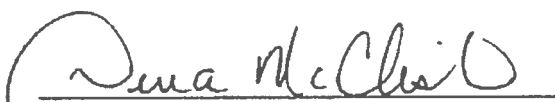


Yen H. Long, Pharm.D., Deputy Executive Secretary  
Nevada State Board of Pharmacy

**CERTIFICATE OF SERVICE**

I certify that I am an employee of the Nevada State Board of Pharmacy, and that on this 26 day of June, 2019, I personally served a true and correct copy of the foregoing document upon the following:

Morris Law Center  
5450 W. Sahara Avenue – Suite 330  
Las Vegas, NV 89146

  
NAME: \_\_\_\_\_

FILED

JUN 28 2019

NEVADA STATE BOARD  
OF PHARMACY

## MORRIS LAW CENTER

ATTORNEYS AT LAW

5450 W. SAHARA AVE., SUITE 330 | LAS VEGAS, NV 89146

PHONE: (702) 850-7798 | FAX: (702) 850-7998

EMAIL: brian@morrislawcenter.com

June 25, 2019

## MEMORANDUM

To: Mr. Brett Kandt, *Esq.*, and the Nevada State Board of Pharmacy  
Via USPS Regular Mail  
985 Damonte Ranch Pkwy  
Suite 206  
Reno, NV 89521

Re: Dr. Valorie Davidson

This memorandum is to address the allegations of unlicensed prescribing and dispensing brought against Dr. Valorie Davidson in a letter first dated April 18, 2019. Dr. Davidson has appealed the initial determination and the hearing is scheduled for the meeting of the Board on the 17<sup>th</sup> of July.

**Dr. Davidson was authorized to write prescriptions under Nevada's Telehealth Statutes.**

Dr. Davidson has been accused of inappropriately writing prescriptions for controlled substances to patients in Nevada without the appropriate licenses. However, she holds a license under the Washington State Department of Health as a Naturopathic Physician under Credential Number NT 00001326 and is registered with the Drug Enforcement Agency (DEA). **Exhibit 1.** She is authorized to issue prescriptions in Washington State Department of Health.

Nevada Law provides an exception to the general licensing requirements which notes that "person who is not licensed to practice in this State, but is authorized by the laws of another state to prescribe, shall be deemed to be a legal prescription unless the person prescribed or wrote the prescription in violation of the provisions of NRS 453.3611 to 453.3648, inclusive." NRS 639.235(1). The statutes at NRS 453.3611 to 453.3648 focus largely on the prevention of the use of illegal internet pharmacies and are not relevant here. Since Dr. Davidson is a licensed prescriber in another state, she is entitled to provide prescriptions properly for patients in Nevada. The law does go on to require that for some classes of prescriptions there must be a bona fide relationship between the prescriber and the patient, but Dr. Davidson maintains genuine and on-going relationships with all of her patients.

www.morrislawcenter.com



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It is possible to read certain portions of Nevada's statutes such that they are in tension with NRS 639.235(1). Specifically, NRS 629.515 contains a section stating that "before a provider of health care who is located at a distant site may use telehealth to direct or manage the care or render a diagnosis of a patient who is located at an originating site in this State or write a treatment order or prescription for such a patient, the provider must hold a valid license or certificate to practice his or her profession in this State..." However, in reading NRS 639.235 alongside NRS 629.515, it must be found that NRS 639.235(1) provides a limited exception for some prescriptions when the prescriber is properly licensed in another state and maintains a bona fide relationship with the patient.

Policy strongly favors the finding that NRS 639.235 provides an exception that would allow someone like Dr. Davidson to write the required prescriptions. The Nevada State Legislature has specifically made findings that the State seeks to "facilitate the provision of services through telehealth to improve public health and the quality of health care provided to patients and to lower the cost of health care in this State". NRS 629.510(3). Additionally, as stated in the letter sent to Dr. Davidson, the Board seeks to impose punitive fines. As such, the rule of lenity applies and requires a reading of the law which is favorable to the accused. *State v. Lucero*, 127 Nev. 92, 99, 249 P.3d 1226, 1230 (2011) ("The rule of lenity is a rule of construction that demands that ambiguities in criminal statutes be liberally interpreted in the accused's favor...")(internal quotation marks omitted). Further, Dr. Davidson has patients which have been under her care for an extended period, including while she was licensed and practicing physically in Nevada. As such, any other interpretation of the law would deny those patients their physician of choice and could thus harm the patients.

Thus, the board should find that Dr. Davidson's practice was properly authorized under the laws and policies of Nevada. Under the law, the legislature's policy, and in the best interest of her patients, she should be able to resume her practice as it was prior to the sending of the cease and desist letter.

**At a minimum, the fine should be dropped while she corrects the licensing situation.**

Dr. Davidson reasonably believed, and still believes, that her practice comported with the laws of Nevada and that she was serving her patients legally. As discussed above, this is an unavoidable legal interpretation and she should be entitled to return to that practice. However, assuming for the sake of argument that the Board takes a narrower view of the law, it should still elect not to impose any fines or fees against Dr. Davidson and should permit her to seek additional licensing in this state.

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Fines and penalties are meant primarily to deter and punish wrongful conduct. *See e.g. State v. Interocean Risk Sys.*, 109 Nev. 710, 714, 857 P.2d 3, 6 (1993) (noting that the purpose of fines, especially when issued by an administrative body, is to help enforce the regulations and deter recurring violations). However, Dr. Davidson does not need to be deterred. She believed and believes her actions were lawful. She has already ceased issuing prescriptions in Nevada pending a final decision from the Board and will either comply with any decision of the Board or will take lawful steps to challenge such a finding under NRS 639.255(2) and related authority. She has no intention of violating a decision of the Board while it is legally in force. Thus, there is no need for a fine to enforce or to deter a recurring violation.

Further, fining her would go against public policy even if the law were construed in such a way that she may not return to her prior activities. Such a fine would deter other providers who may be uncertain as to the law, even though they would be authorized, from providing their services. This would be contrary to the legislatures explicit policy of enabling and encouraging the provision of telehealth services. NRS 629.510. Additionally, Dr. Davidson was completely lacking in any *mens rea* and in fact believes she was doing a public good by providing additional access to medical services. While certain strict liability crimes exist, generally *mens rea* is required before punitive action is taken. *State v. Jennings*, 150 Ariz. 90, 94, 722 P.2d 258, 262 (1986) (noting that strict liability crimes are the exception).<sup>1</sup> Further, to create a strict liability crime there must be "a clear legislative intent not to require any degree of *mens rea*." *Id.* Since there is no clear intent to make this a strict liability offense and Dr. Davidson had no *mens rea*, no fine should be imposed even if it is found that Dr. Davidson must obtain additional licenses before returning to practice in Nevada.

Sincerely,

MORRIS LAW CENTER

Brian A. Morris, Esq.

BAM/TAW/ww

Enclosures: as stated

cc: Brett Kandt

bkandt@pharmacy.nv.gov

Client

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<sup>1</sup> See also NRS 193.190.

# Exhibit 1

# Washington State Department of Health

By the authority of RCW 18.36A this person  
**Valorie M Davidson**

is granted a  
**Naturopathic Physician License**

Authorized for DEA Registration 08/03/2017

Secretary

Status  
**ACTIVE**

Effective Date  
**03/22/2019**

Initial Issuance  
**10/06/2004**

Credential Number  
**NT 00001328**  
Expiration Date  
**04/15/2020**

## CONTROLLED SUBSTANCE REGISTRATION CERTIFICATE UNITED STATES DEPARTMENT OF JUSTICE DRUG ENFORCEMENT ADMINISTRATION WASHINGTON D.C. 20537

| DEA REGISTRATION<br>NUMBER | THIS REGISTRATION<br>EXPIRES | FEE<br>PAID |
|----------------------------|------------------------------|-------------|
| MD4453522                  | 06-30-2020                   | \$731       |

REGISTERED ACTIVITY WITHIN SCHEDULE IS  
RESTRICTED BY YOUR STATE.

| SCHEDULES   | BUSINESS ACTIVITY          | ISSUE DATE |
|-------------|----------------------------|------------|
| 3,3N,4<br>5 | MLP-NATUROPATHIC PHYSICIAN | 06-23-2017 |

DAVIDSON, VALORIE D  
1140 10TH ST  
STE 212  
BELLINGHAM, WA 98225

Sections 304 and 1006 (21 USC 824 and 956) of the  
Controlled Substances Act of 1970, as amended,  
provide that the Attorney General may revoke or  
suspend a registration to manufacture, distribute,  
dispense, import or export a controlled substance.

Form DEA-223 (9/2016)

THIS CERTIFICATE IS NOT TRANSFERABLE ON CHANGE OF OWNERSHIP, CONTROL, LOCATION, OR BUSINESS ACTIVITY,  
AND IT IS NOT VALID AFTER THE EXPIRATION DATE.