

FILED

MAR 14 2017

NEVADA STATE BOARD
OF PHARMACY

BEFORE THE NEVADA STATE BOARD OF PHARMACY

NEVADA STATE BOARD OF PHARMACY,

Petitioner,

v.

JESSICA NGUYEN, RPH

Certificate of Registration No. 15397, and

SPRING VALLEY PHARMACY

Certificate of Registration No. PH02375

Respondents.

) CASE NO. 16-022-RPH-S

) 16-022-PH-S

) NOTICE OF INTENDED ACTION
) AND ACCUSATION

Larry L. Pinson, in his official capacity as Executive Secretary of the Nevada State Board of Pharmacy, makes the following that will serve as both a notice of intended action under Nevada Revised Statutes (NRS) 233B.127(3), and as an accusation under NRS 639.241.

JURISDICTION

I.

The Nevada State Board of Pharmacy (Board) has jurisdiction over these matters and these Respondents because at the time of the alleged events, Respondent Jessica Nguyen (Ms. Nguyen), Certificate of Registration No. 15397, was a pharmacist licensed by the Board, and Respondent Spring Valley Pharmacy (Spring Valley), Certificate of Registration No. PH02375, was a pharmacy licensed by the Board.

FACTUAL ALLEGATIONS

II.

This case involves three prescriptions for one-year-old patient A.G. One prescription for Methotrexate compounded liquid, with refills, designated as Prescription No. 676992, and two prescriptions for Flagyl suspension, designated Prescription Nos. 675133 and 678825.

III.

In March 2016, a Board Inspector conducted Spring Valley's annual pharmacy inspection.

IV.

The Board Inspector observed four (4) vials of Methotrexate 250mg/10ml injection on the pharmacy shelf and requested to see the prescription and records related to the drug.

V.

The pharmacy manager, Respondent Ms. Nguyen, presented the prescription, Prescription No. 676992, and all available records to the Board Inspector.

VI.

The Board Inspector observed:

1. A.G.'s physician transmitted what would become Prescription No. 676992 to Spring Valley electronically on February 23, 2016.
2. Spring Valley's computer system shows that Ms. Nguyen entered the prescription data into the computer.
3. The system did not capture the signature, initials, or the name of each pharmacist or pharmaceutical technician who played a role in processing or filling Prescription No. 676992.
4. The computer system also failed to record which pharmacist verified the medication as accurate before dispensing it.

VII.

In April 2016, Ms. Nguyen provided the Board Inspector a duplicate label for Prescription No. 676992. The duplicate label shows that Spring Valley dispensed the prescription initially on February 23, 2016, with the instructions: "GIVE 0.4 ML BY MOUTH EVERY WEEK ON MONDAY (25MG/ML)."
(Emphasis added.)

VIII.

Ms. Nguyen also provided the Board Inspector a copy of the prescription from the pharmacy's archived paper records. That copy included the back label from the February 23, 2016 initial fill. That copy of the back label did not match the duplicate label Ms. Nguyen provided to the Board Inspectors. The instructions on that copy of the back label are: "GIVE 4ML BY MOUTH EVERY WEEK ON MONDAY (GIVE 25MG/10ML).\" (Emphasis added.)

IX.

The instructions on the duplicate label and on the back label should match. Ms. Nguyen could not explain why the records she provided were inconsistent.

X.

Patient A.G.'s grandmother and caregiver (Ms. Smith) later recalled that the bottle of Methotrexate Spring Valley dispensed on February 23, 2016—the initial fill—was a 2 mL bottle of liquid. The label on the bottle included the direction to give 4mL, rather than 0.4 mL. Ms. Smith is a registered pharmaceutical technician and is therefore familiar with prescription bottle sizes, dosages and labeling.

XI.

Due to an adjustment by A.G.'s grandmother, A.G. reportedly ingested the correct dosage and experienced no adverse effects from the incident.

XII.

A.G.'s physician sent Spring Valley a clarified prescription on March 15, 2016 for a 20 count of "Methotrexate 2.5 MG Oral Tablet." The SIG for the prescription was "10 Milligram (25mg/10ml) Milligram, Oral 4ml once a week on Monday.\" (Emphasis added.) The notes to the pharmacist similarly stated: "Compound to Methotrexate 25mg/10ml every Monday.\" The prescription allowed for six refills. (Emphasis added.)

XIII.

Spring Valley was unable to produce any record of this e-prescription. The Board Inspector obtained a copy from A.G.'s physician.

XIV.

The label on the bottle that Spring Valley dispensed pursuant to that clarified prescription, which Spring Valley continued to designate as Prescription No. 676992, has instructions to "GIVE 0.4 ML BY MOUTH EVERY WEEK ON MONDAY (25MG/ML). (Emphasis added.) That label failed to include: (1) the medication's strength/concentration, or (2) the required warning labels.

XV.

Spring Valley's records show that Respondent Ms. Nguyen input the prescription data in Spring Valley's computer system. They also show that Ms. Nguyen verified the medication before the pharmacy dispensed it.

XVI.

Spring Valley could not produce records to show who processed the prescription and filled the medication.

XVII.

Spring Valley could not produce evidence to show that anyone contacted A.G.'s physician for approval to change the compound from "(25mg/10ml) Milligram, Oral 4ml once a week on Monday" to "GIVE 0.4 ML BY MOUTH EVERY WEEK ON MONDAY (25MG/ML)."

XVIII.

Both the duplicate labels for Prescription No. 676992 for fill dates February 23, 2017 and refill date March 15, 2016, show Mylan as the medication manufacturer. The NDC on the labels

is 51079-0670-05. Neither Mylan nor that NDC number appears on any invoice for Methotrexate purchased by Spring Valley.

XIX.

Respondent Ms. Nguyen verbally admitted to the Board Investigator that she changed the NDC numbers on medications in Spring Valley's system so that they would qualify for payment by insurance companies.

XX.

The Board investigator requested a copy of Spring Valley's billing records for the medications dispensed for A.G. Neither Respondent Spring Valley nor respondent Ms. Nguyen provided a copy of those records as requested. They offered no explanation for that failure to provide the requested records.

XXI.

During the investigation, A.G.'s grandmother, Ms. Smith, volunteered that Spring Valley has made additional mistakes on A.G.'s medications. Spring Valley delivers A.G.'s medications to his home. During a deliver on March 15, 2016, the bottle of Methotrexate leaked in the bag, causing approximately half of the medication to spill onto the outside of the bottle and inside the bag. Spring Valley later provided a replacement bottle.

XXII.

Spring Valley's records do not reflect the additional bottle in the patient profile, although it is noted on the workflow document for Prescription No. #676992. Those records show a fill date and time of April 12, 2016 at 9:59 AM. The status is "deleted." The record shows that Respondent Ms. Nguyen was the "IOU pharmacist", which indicates that she is the pharmacist who provided the remaining medication to complete a previous partial fill.

XXIII.

During the March 15, 2016 inspection, the Board's Inspectors requested a copy of Spring Valley's policies and procedures for compounding nonsterile compounded drug products.

Neither Spring Valley nor Ms. Nguyen could provide those written policies and procedures.

XXIV

During the Board's investigation, the Complainant advised the Investigator of a separate filling error by Spring Valley concerning A.G.'s medication. On January 13, 2016, A.G.'s physician send an e-prescription for "Flagyl 250 MG Oral tablet" with notes to compound for "Flagyl Suspension 20 mg per mL, to take 4mL by mouth every 6 hours, for a dosage of 80 mg 4 times a day for 10 days." Spring Valley designated it Prescription No. 675133.

XXV.

On April 25, 2016, Respondent Ms. Nguyen provided a duplicate label for Prescription No. 675133. That duplicate label revealed that Spring Valley dispensed a medication with directions to take "3ML BY MOUTH EVERY 6 HOURS UNTIL GONE." The label also stated "15 Tab METRONIDAZOLE 500MG."

XXVI.

The label shows that Respondent Ms. Nguyen, initials "JTN", verified the medication.

XXVII.

A copy of the prescription the Board Inspector obtained from the pharmacy's archived paper records contained a back label showing the directions "TAKE HALF TABLET BY MOUTH EVERY SIX HOURS UNTIL GONE."

XXVIII.

The pharmacy has none of the compounding records required to show that it compounded the medication correctly. Neither the labels nor the archived paper records for Prescription No. 675133 reveal the medication's concentration.

XXIX.

Ms. Nguyen input the prescription date into Spring Valley's computer system, and she verified the medication was accurate prior to sale. Spring Valley's records are missing all information regarding the person who filled the medication.

XXX.

The Board Inspector found a second instance where Spring Valley failed to adequately label a Flagyl prescription for A.G. in March 2016.

XXXI.

On March 28, 2016, A.G.'s physician transmitted to Spring Valley an e-prescription, Prescription No. #678825, for "Flagyl 250 MG Oral Tablet". The prescription notes called for "Flagyl Suspension 20 mg per Ml, to take 4 mL by mouth every 6 hours, for a dose of 80 mg 4 times a day for 10 days."

XXXII.

The duplicate label for that prescription shows directions to take "80 MG (4ML) BY MOUTH EVERY 6 HOURS FOR 10 Days" and "160 MI METRONIDAZOLE 500/ML."

XXXIII.

The duplicate label shows Ms. Nguyen, initials "JTN", verified the medication.

XXXIV.

Spring Valley did not have a copy of the back label in its records.

XXXV.

The workflow records for Prescription No. #678825 show that Ms. Nguyen input the date of the prescription in the pharmacy computer system. They show a fill time of March 28, 2016, at 11:59 AM. They further show that pharmacist Martin Chibueze verified the medication as accurate the same day, at 4:46 PM.

XXXVI.

Respondent Ms. Nguyen could not explain to the Board Investigator the meaning of “160 MI METRONIDAZOLE 500/ML.”

XXXVII.

The label did not indicate the concentration of the medication, so Spring Valley was unable to provide verification that it compounded the medication correctly.

XXXVIII.

On March 15, 2016, Ms. Nguyen provided a statement to the Board’s Reno Office stating that Spring Valley would no longer provide non-sterile compounded products to its patients.

XXXIX.

Pharmacy records indicate the that pharmacy continued to make compounded nonsterile medication, including an additional methotrexate compound on April 12, 2016.

FIRST CAUSE OF ACTION

(Spring Valley Pharmacy)

XL.

NAC 639.945(1)(d) states that “failing strictly to follow the instructions of the person writing, making or ordering a prescription or chart order as to its filling or refilling” constitutes “unprofessional conduct and conduct contrary to the public interest.” NRS 639.210(4) lists “unprofessional conduct or conduct contrary to the public interest” as grounds for suspension or revocation of any license or registration issued by the Board. Similarly, NRS 639.255 says the Board may discipline the holder of any license it issued using any of the methods listed therein.

XLI.

Spring Valley violated NAC 639.945(1)(d) when they, without first contacting A.G.’s prescriber for approval to make an adjustment, dispensed Prescription No. 676992 to A.G. with instructions to “GIVE 4ML BY MOUTH EVERY WEEK ON MONDAY (GIVE 25MG/10ML),” instead of “0.4 ML BY MOUTH EVERY WEEK ON MONDAY (25MG/ML)”

as directed by A.G.'s physician. They, and each of them, are subject to discipline pursuant to NRS 639.210 and/or NRS 639.255.

SECOND CAUSE OF ACTION

(Spring Valley Pharmacy)

XLII.

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

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

Spring Valley Pharmacy's computer system does not accurately capture and retain the information required by NAC 639.751, NAC 639.930(3) and (4), and NAC 639.935(g), as demonstrated by the system's failure to capture, retain, and print the required information for Prescription Nos. 676992, 675133 and 678825. Spring Valley Pharmacy therefore violated each of those regulations and is subject to discipline pursuant to NRS 639.210 and/or NRS 639.255.

THIRD CAUSE OF ACTION

(Spring Valley Pharmacy)

XLIII.

NAC 639.751(1)(b) and (2), and NAC 639.930(3) require a pharmacy computer system to have adequate safeguards to identify whether information in the system concerning a prescription has been modified or manipulated, and, where information was modified or manipulated, identify the manner, date and person who modified or manipulated the information. NAC 639.930(4) and

(5) requires the pharmacy's computer system to maintain the information identified per NAC 639.930(3) and to prevent the removal of that information and the record of a prescription once the system assigns a number to the prescription.

XLIV.

By failing to maintain adequate safeguards in its computer system to identify the information required by NAC 639.751(1)(b) and (2) and NAC 639.930(3) as to Prescription Nos. 676992, 675133 and 678825, and by failing to prevent the removal of that information as required by NAC 639.930(4) and (5), Spring Valley violated each of those regulations and is subject to discipline pursuant to NRS 639.210 and/or NRS 639.255.

FOURTH CAUSE OF ACTION

(Spring Valley Pharmacy)

XLV.

NRS 454.291(1) requires a pharmacy to maintain accurate records of the purchase and disposition of all its dangerous drugs and to make those records available to inspection by agents and inspectors of the Board. Those records must be maintained for a minimum of two years.

XLVI.

By producing inaccurate records of Prescription No. 676992 to the Board Investigator during the investigation, in particular, by producing a duplicate label for Prescription No. 676992 with the directions "give 0.4mL by mouth every week on Monday (25mg/mL)" and a subsequent copy of the prescription paperwork with different instructions—"give 4mL by mouth every week on Monday (give 25mg/10mL)"—Spring Valley is guilty of violating NAC 639.930(1) and (2) and are subject to discipline pursuant to NRS 639.210 and/or NRS 639.255.

FIFTH CAUSE OF ACTION

(Spring Valley Pharmacy)

XLVII.

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

XLIII.

NAC 639.6703 requires a pharmacist engaged in compounding nonsterile compounded drug products to label the compounded drug to include the name or the final compounded product or the name of each active ingredient present in the nonsterile compounded drug product, the internal control number assigned to the product and the beyond use date (expiration date) for the product.

XLIX.

By failing to properly label the container for Prescription No. 676992 and Prescription No. 675133 to include an accurate manufacturer name or NDC number, the expiration date or BUD, the strength/concentration of the drug, the proper warning labels and the specific directions for use set by the practitioner, Spring Valley violated NRS 639.2801 and NAC 639.6703 and are subject to discipline pursuant to NRS 639.210 and/or NRS 639.255.

SIXTH CAUSE OF ACTION

(Spring Valley Pharmacy)

L.

NAC 639.482(1) requires a pharmacy to maintain all prescription records for a minimum of two years. Subsection 2 of that regulation requires a pharmacy to make all records available for inspection and copying upon request of the Board and its agents, including Board Inspectors and Investigators. By failing to produce and provide to the Board Investigator the billing records

for A.G.'s medications, Spring Valley violated that regulation and is subject to discipline pursuant to NRS 639.210 and/or NRS 639.255.

SEVENTH CAUSE OF ACTION

(Spring Valley Pharmacy)

LI.

NRS 454.286(1) requires “[e]very retail pharmacy . . . [that] engages in the practice of dispensing or furnishing drugs to patients shall maintain a complete and accurate record of all dangerous drugs purchased and those sold on prescription, dispensed, furnished or disposed of otherwise.” “The records must be retained for a period of 2 years and must be open to inspection by members, inspectors or investigators of the Board or inspectors of the Food and Drug Administration.” NRS 454.286(2).

LII.

By failing to maintain complete and accurate records of all dangerous drugs it purchased and the dangerous drugs it sold, Spring Valley violated NRS 454.286 and is subject to discipline pursuant to NRS 639.210 and/or NRS 639.255.

EIGHTH CAUSE OF ACTION

(Spring Valley Pharmacy)

LIII.

NAC 639.247 and NAC 639.67035 require each pharmacy engaged in nonsterile compounding to establish and follow detailed policies and procedures setting the process(es) the pharmacy and its employees must follow and records the pharmacy and its employees must keep to document that process. Those policies and procedures must ensure the quality and safety of compounded drug products and pharmacy personnel.

LIV.

NAC 639.67015 requires a compounding pharmacy to “establish and maintain written policies and procedures for compounding drug products to ensure that each final compounded

drug product has the identity, strength, quality and purity which the compounded drug product is purported or represented to have.” Those policies and procedures should encapsulate and cause to be put into practice all the requirements of NAC 639.67037.

LV.

By failing to have, and by failing to produce to the Board Investigator, policies and procedures as described above, Spring Valley violated NAC 639.247, NAC 639.67015, NAC 639.67035 and NAC 639.67037.

NINTH CAUSE OF ACTION

(Jessica Nguyen)

LVI.

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

TENTH CAUSE OF ACTION

(Spring Valley Pharmacy and Jessica Nguyen)

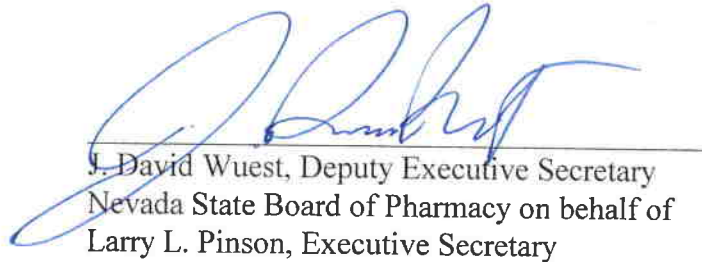
LVII.

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

LVIII.

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 14th day of March 2017.



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

NOTICE TO RESPONDENT

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

FILED

APR 03 2017

NEVADA STATE BOARD
OF PHARMACY

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BEFORE THE NEVADA STATE BOARD OF PHARMACY

NEVADA STATE BOARD OF
PHARMACY

Petitioner,

vs.

Case Nos.: 16-022-RPH-S; and
16-022-PH-S.

JESSICA NGUYEN, RPH,
Certificate of Registration No. 15937; and

SPRING VALLEY PHARMACY,
Certificate of Registration No. PH02375,

Respondents.

**ANSWER, NOTICE OF DEFENSE,
AND REQUEST FOR HEARING**

COMES NOW Spring Valley Pharmacy and Jessica Nguyen ("Respondents") by and through their counsel Jude Edward Nazareth, Esq., of Montez Nazareth Law to answer to the Nevada State Board of Pharmacy's Notice of Intended Action and Accusation ("Notice") as follows:

As to Paragraphs I - III of the Notice, Respondents admit the allegations contained therein.

As to Paragraph IV of the Notice, Respondents admit the Board Inspector "requested to see the prescription and records related to the drug." Except as heretofore admitted, Respondents are without sufficient knowledge or information to form a belief

1 as to the truth or falsity of the matters alleged and/or deny the allegations therein.

2 As to Paragraph V of the Notice, Respondents admit the allegations contained
3 therein.

4 As to Paragraph VI of the Notice, Respondents are without sufficient knowledge
5 or information to form a belief as to the truth or falsity of the matters alleged and/or deny
6 the allegations therein.

7 As to Paragraphs VII – IX of the Notice, Respondents admit the allegations
8 contained therein.

9 As to Paragraphs X – XIII of the Notice, Respondents are without sufficient
10 knowledge or information to form a belief as to the truth or falsity of the matters alleged
11 and/or deny the allegations therein.

12 As to Paragraph XIV of the Notice, Respondents admit the allegations contained
13 in the first sentence therein. Except as heretofore admitted, Respondents are without
14 sufficient knowledge or information to form a belief as to the truth or falsity of the
15 remaining matters alleged and/or deny the allegations therein.

16 As to Paragraph XV of the Notice, Respondents admit the allegations contained
17 therein.

18 As to Paragraphs XVI – XVII of the Notice, Respondents are without sufficient
19 knowledge or information to form a belief as to the truth or falsity of the matters alleged
20 and/or deny the allegations therein.

21 As to Paragraph XVIII of the Notice, Respondents admit the allegations contained
22 in the first sentence therein. Except as heretofore admitted, Respondents are without
23 sufficient knowledge or information to form a belief as to the truth or falsity of the
24 remaining matters alleged and/or deny the allegations therein.

25 As to Paragraphs XIX - XXIV of the Notice, Respondents are without sufficient
26 knowledge or information to form a belief as to the truth or falsity of the matters alleged
27 and/or deny the allegations therein.

1 As to Paragraphs XXV – XXVI of the Notice, Respondents admit the allegations
2 contained therein.

3 As to Paragraphs XXVII - XXXIV of the Notice, Respondents are without
4 sufficient knowledge or information to form a belief as to the truth or falsity of the
5 matters alleged and/or deny the allegations therein.

6 As to Paragraph XXXV of the Notice, Respondents admit the allegations
7 contained therein.

8 As to Paragraphs XXXVI – XXXVII of the Notice, Respondents are without
9 sufficient knowledge or information to form a belief as to the truth or falsity of the
10 matters alleged and/or deny the allegations therein.

11 As to Paragraph XXXVIII of the Notice, Respondents admit the allegations
12 contained therein.

13 As to Paragraph XXXIX of the Notice, Respondents are without sufficient
14 knowledge or information to form a belief as to the truth or falsity of the matters alleged
15 and/or deny the allegations therein.

16 As to Paragraphs XL – LVII of the Notice, such Paragraphs contain
17 characterizations and conclusions of law, and, to the extent a response is deemed
18 necessary, Respondents are without sufficient knowledge or information to form a belief
19 as to the truth or falsity of the matters alleged and/or deny the allegations therein.

20 As to Paragraph LVIII of the Notice, such Paragraph contains Petitioner's
21 requests, and, to the extent a response is deemed necessary, Respondents are without
22 sufficient knowledge or information to form a belief as to the truth or falsity of the
23 matters alleged and/or deny the allegations therein.

24 As to Paragraphs I – LVIII of the Notice, Respondents are diligently researching
25 the matters alleged and reserve their right to amend the foregoing responses.

26 **AFFIRMATIVE DEFENSES**

27 **FIRST AFFIRMATIVE DEFENSE**

1 (Failure to State a Cause of Action)

2 The Notice fails to state a legally cognizable claim under NRS 630 for which relief
3 can be granted.

4 **SECOND AFFIRMATIVE DEFENSE**

5 (Denial of Fundamental Due Process)

6 For each cause of action, the Notice fails to state facts that would give
7 Respondents sufficient notice of the charges to which they must answer to enable them to
8 prepare a meaningful defense thereto as required by NRS 630.339(1).

9 **THIRD AFFIRMATIVE DEFENSE**

10 (Lack of Intent)

11 Certain causes of action in the Notice require that Respondent be shown to have
12 mens rea or an intent to deceive and no intent is alleged.

13 **FOURTH AFFIRMATIVE DEFENSE**

14 (No Patient Harm)

15 None of the causes of action or allegations in the Complaint support any facts that
16 would show the patient was harmed.

17 **FIFTH AFFIRMATIVE DEFENSE**

18 (Statute of Limitations / Laches)

19 The Notice was filed beyond the applicable statute of limitations for one or more
20 causes of action or generally violates the equitable principle of laches.

21 **SIXTH AFFIRMATIVE DEFENSE**

22 (Acts of Others)

23 The occurrences referred to in the Notice and any damages resulting therefrom are
24 caused by the actions or omissions of another party, a third party, or parties and/or
25 entities over whom Respondents had no control.

26 **SEVENTH AFFIRMATIVE DEFENSE**

27 (Remedial Measures)

1 The occurrences referred to in the Notice and any damages resulting therefrom
2 were addressed and corrected, and Respondents are continually working to prevent any
3 repeat occurrences.

4 **EIGHTH AFFIRMATIVE DEFENSE**

5 (Undue Delay in Bringing Claims)

6 The claims made by Petitioner are barred by the doctrines of estoppel, waiver,
7 acquiesce, and/or laches.

8 **NINTH AFFIRMATIVE DEFENSE**


9 (Reservation of Other Defenses)

10 Respondents hereby reserve the right to amend this Answer to include other
11 affirmative defenses.


12
13 WHEREFORE, Respondents respectfully request the following relief:

- 14 1. That a hearing be set in this matter with adequate time for Respondents to
15 investigate the claims, secure witnesses, and coordinate a viable defense;
16 2. That following said hearing this action be dismissed with prejudice; and
17 3. The Board award Respondents' attorney fees and costs to defend this litigation.

18
19 Dated this 30th day of March, 2017.

20
21 
22 JUDE E. NAZARETH, ESQ.
23 Nevada Bar No. 10695
24 Montez Nazareth Law
25 7925 W. Russell Rd. # 401506
26 Las Vegas, Nevada 89140
27 (702) 948-7474
28 Attorney for Respondents,
Jessica Nguyen; and Spring Valley
Pharmacy

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JUDE NAZARETH, ESQ.

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BEFORE THE NEVADA STATE BOARD OF PHARMACY

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NEVADA STATE BOARD OF PHARMACY,

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JESSICA NGUYEN, RPH

Certificate of Registration No. 15397

MARTIN O. CHIBUEZE, RPH

Certificate of Registration No. 17555

SPRING VALLEY PHARMACY

Certificate of Registration No. PH02375

Respondents.

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

16-015-RPH-B-S

16-015-PH-S

NOTICE OF INTENDED ACTION
AND ACCUSATION

Larry L. Pinson, in his official capacity as Executive Secretary of the Nevada State Board of Pharmacy, makes the following that will serve as both a notice of intended action under Nevada Revised Statutes (NRS) 233B.127(3), and as an accusation under NRS 639.241.

JURISDICTION

I.

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

FACTUAL ALLEGATIONS

II.

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

III.

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

IV.

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

V.

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

VI.

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

VII.

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

VIII.

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

IX.

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

X.

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

XI.

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

1. Amphetamine Salts 10 mg NDC 00555-0972-02: Prescription No. 26542 appears on this inventory four times, once on February 5, 2016, and three times on February 8. Two of those entries show that Spring Valley dispensed the medication, and two show that Spring Valley added the same amount (120 tablets) back into its inventory. The inventory showed that Spring Valley should have had 86 tablets in its inventory on March 15, 2016. The Board Investigator conducted a count of the Amphetamine Salts 10 mg tablets on March 15, 2016, and counted 94.
2. Amphetamine 10 mg ER, NDC 000555-07870-2: Prescription No. 26542 appears on this inventory twice. It shows that Spring Valley dispensed 120 tablets on February 8, 2016, and then received the same amount back into its inventory. The inventory showed that Spring Valley should have had 195 tablets in its inventory on March 15, 2016. The Board Investigator counted and documented 215 tablets.
3. Amphetamine 10 mg NDC 45963-0745-11: Prescription No. 26542 appears on this inventory once, when Spring Valley purportedly dispensed 120 tablets. The inventory shows that Spring Valley should have had count of -75 tablets. The Board Investigator counted 23 tablets.

XII.

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

XIII.

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

XIV.

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

XV.

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

XVI.

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

XVII.

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

XVIII.

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

¹ “IOU” indicates a remaining medication fill from a prior partial fill.

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

XIX.

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

XX.

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

XXI.

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

FIRST CAUSE OF ACTION
(Spring Valley Pharmacy)

XXII.

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

XXIII.

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

XXIV.

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

SECOND CAUSE OF ACTION
(Spring Valley Pharmacy)

XXV.

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

XXVI.

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

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

THIRD CAUSE OF ACTION

(Spring Valley Pharmacy)

XXVII.

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

XXVIII.

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

FOURTH CAUSE OF ACTION

(Spring Valley Pharmacy)

XXIX.

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

XXX.

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

XXXI.

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

FIFTH CAUSE OF ACTION

(Spring Valley Pharmacy)

XXXII.

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

XXXIII.

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

SIXTH CAUSE OF ACTION

(Spring Valley Pharmacy)

XXXIV.

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

SEVENTH CAUSE OF ACTION
(Spring Valley Pharmacy)

XXXV.

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

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

EIGHTH CAUSE OF ACTION
(Martin Chibueze)

XXXVI.

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

XXXVII.

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

NINTH CAUSE OF ACTION
(Spring Valley Pharmacy)

XXXVIII.

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

XXXIX.

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

TENTH CAUSE OF ACTION

(Jessica Nguyen)

XL.

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

ELEVENTH CAUSE OF ACTION

(Spring Valley Pharmacy and Jessica Nguyen)


XLI.

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

XLII.

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

DATED this 14 day of March 2017.


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

APR 03 2017

NEVADA STATE BOARD
OF PHARMACY

1 JUDE E. NAZARETH, Esq.
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7 JEdward@MNLawNV.com
8 Attorneys for Respondents,
9 Jessica Nguyen; and Spring Valley Pharmacy

BEFORE THE NEVADA STATE BOARD OF PHARMACY

NEVADA STATE BOARD OF
PHARMACY

Petitioner,

vs.

Case Nos.: 16-015-RPH-A-S;
16-015-RPH-A-S; and
16-015-PH-S

JESSICA NGUYEN, RPH,
Certificate of Registration No. 15937;

MARTIN O. CHIBUEZE, RPH;
Certificate Registration No. 17555;

SPRING VALLEY PHARMACY,
Certificate of Registration No. PH02375,

Respondents.

**ANSWER, NOTICE OF DEFENSE,
AND REQUEST FOR HEARING**

COMES NOW Spring Valley Pharmacy and Jessica Nguyen ("Respondents") by and through their counsel Jude Edward Nazareth, Esq., of Montez Nazareth Law to answer to the Nevada State Board of Pharmacy's Notice of Intended Action and Accusation ("Notice") as follows:

As to Paragraph I of the Notice, Respondents admit the allegations contained therein.

As to Paragraphs II – XI of the Notice, Respondents are without sufficient knowledge or information to form a belief as to the truth or falsity of the matters alleged

1 and/or deny the allegations therein.

2 As to Paragraph XII of the Notice, Respondents admit the allegations contained
3 therein.

4 As to Paragraph XIII of the Notice, Respondents admit the allegations contained
5 in the first sentence therein. Except as heretofore admitted, Respondents are without
6 sufficient knowledge or information to form a belief as to the truth or falsity of the
7 remaining matters alleged and/or deny the allegations therein.

8 As to Paragraph XIV of the Notice, Respondents admit the allegations contained
9 in the first sentence therein. Except as heretofore admitted, Respondents are without
10 sufficient knowledge or information to form a belief as to the truth or falsity of the
11 remaining allegations therein and/or deny those allegations therein.

12 As to Paragraphs XV – XVIII of the Notice, Respondents are without sufficient
13 knowledge or information to form a belief as to the truth or falsity of the matters alleged
14 and/or deny the allegations therein.

15 As to Paragraph XIX of the Notice, Respondents admit the allegations contained
16 in the first sentence therein. Except as heretofore admitted, Respondents are without
17 sufficient knowledge or information to form a belief as to the truth or falsity of the
18 remaining matters alleged and/or deny the allegations therein.

19 As to Paragraph XX of the Notice, Respondents admit the allegations contained in
20 the first sentence therein. Except as heretofore admitted, Respondents are without
21 sufficient knowledge or information to form a belief as to the truth or falsity of the
22 remaining matters alleged and/or deny the allegations therein.

23 As to Paragraph XXI of the Notice, Respondents are without sufficient knowledge
24 or information to form a belief as to the truth or falsity of the remaining matters alleged
25 and/or deny the allegations therein.

26 As to Paragraphs XXII – XXXV of the Notice, such Paragraphs contain
27 characterizations and conclusions of law, and, to the extent a response is deemed
28

1 necessary, Respondents are without sufficient knowledge or information to form a belief
2 as to the truth or falsity of the matters alleged and/or deny the allegations therein.

3 As to Paragraphs XXXVI – XXXVII of the Notice, such Paragraphs contain
4 characterizations and conclusions of law, and, to the extent a response is deemed
5 necessary, Respondents are without sufficient knowledge or information to form a belief
6 as to the truth or falsity of the matters alleged and/or deny the allegations therein.

7 As to Paragraphs XXXVIII – XLI of the Notice, such Paragraphs contain
8 characterizations and conclusions of law, and, to the extent a response is deemed
9 necessary, Respondents are without sufficient knowledge or information to form a belief
10 as to the truth or falsity of the matters alleged and/or deny the allegations therein.

11 As to Paragraph XLII of the Notice, such Paragraph contains Petitioner's request,
12 and, to the extent a response is deemed necessary, Respondents are without sufficient
13 knowledge or information to form a belief as to the truth or falsity of the matters alleged
14 and/or deny the allegations therein.

15 As to Paragraphs I – XLII of the Notice, Respondents are diligently researching
16 the matters alleged and reserve their right to amend the foregoing responses.

17 **AFFIRMATIVE DEFENSES**

18 **FIRST AFFIRMATIVE DEFENSE**

19 (Failure to State a Cause of Action)

20 The Notice fails to state a legally cognizable claim under NRS 630 for which relief
21 can be granted.

22 **SECOND AFFIRMATIVE DEFENSE**

23 (Denial of Fundamental Due Process)

24 For each cause of action, the Notice fails to state facts that would give
25 Respondents sufficient notice of the charges to which they must answer to enable them to
26 prepare a meaningful defense thereto as required by NRS 630.339(1). 0718710413

27 ///

1 **THIRD AFFIRMATIVE DEFENSE**

2 (Lack of Intent)

3 Certain causes of action in the Notice require that Respondent be shown to have
4 mens rea or an intent to deceive and no intent is alleged.

5 **FOURTH AFFIRMATIVE DEFENSE**

6 (No Patient Harm)

7 None of the causes of action or allegations in the Complaint support any facts that
8 would show the patient was harmed.

9 **FIFTH AFFIRMATIVE DEFENSE**

10 (Statute of Limitations / Laches)

11 The Notice was filed beyond the applicable statute of limitations for one or more
12 causes of action or generally violates the equitable principle of laches.

13 **SIXTH AFFIRMATIVE DEFENSE**

14 (Acts of Others)

15 The occurrences referred to in the Notice and any damages resulting therefrom are
16 caused by the actions or omissions of another party, a third party, or parties and/or
17 entities over whom Respondents had no control.

18 **SEVENTH AFFIRMATIVE DEFENSE**

19 (Remedial Measures)

20 The occurrences referred to in the Notice and any damages resulting therefrom
21 were addressed and corrected, and Respondents are continually working to prevent any
22 repeat occurrences.

23 **EIGHTH AFFIRMATIVE DEFENSE**

24 (Undue Delay in Bringing Claims)

25 The claims made by Petitioner are barred by the doctrines of estoppel, waiver,
26 acquiesce, and/or laches.

27 ///

1 **NINTH AFFIRMATIVE DEFENSE**

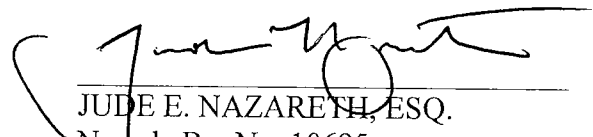
2 (Reservation of Other Defenses)

3 Respondents hereby reserve the right to amend this Answer to include other
4 affirmative defenses.

5
6 WHEREFORE, Respondents respectfully request the following relief:

- 7 1. That a hearing be set in this matter with adequate time for Respondents to
8 investigate the claims, secure witnesses, and coordinate a viable defense;
9 2. That following said hearing this action be dismissed with prejudice; and
10 3. The Board award Respondents' attorney fees and costs to defend this litigation.
11

12 Dated this 30th day of March, 2017.
13

14
15 
16 JUDE E. NAZARETH, ESQ.
17 Nevada Bar No. 10695
18 Montez Nazareth Law
19 7925 W. Russell Rd. # 401506
20 Las Vegas, Nevada 89140
21 (702) 948-7474
22 Attorney for Respondents,
23 Jessica Nguyen; and Spring Valley
24 Pharmacy
25
26
27
28

CERTIFICATE OF SERVICE

I hereby certify that on March 31, 2017, I served a true and correct copy of
RESPONDENTS' ANSWER, NOTICE OF DEFENSE, AND REQUEST FOR
HEARING addressed to the following counsel of record in the service list below.

(XX) VIA U.S. Mail: By placing a true copy of copy thereof enclosed in a sealed envelope in
the United States mail with postage thereon fully prepaid, addressed as indicated on the service
list below.

(XX) VIA FACSIMILE OR ELECTRONIC MAIL, AS INDICATED BELOW:

() By causing a true copy thereof to be telecopied to the number indicated on the
service list below.

(XX) Sent via electronic mail to the electronic address stated in the service list below.

() VIA PERSONAL DELIVERY: By causing a true copy thereof to be hand delivered on
this date to the address(es) at the addressee(s) set forth on the service list below.

S. Paul Edwards, Esq., General Counsel
Nevada State Board of Pharmacy
431 W. Plumb Lane
Reno, NV 89509
775 850 1440
775 850 1444 – fax
pedwards@pharmacy.nv.gov
Attorneys for Petitioners


JUDE NAZARETH, ESQ.

1. Answer to the Notice of Intended Action and Accusation 16-015-RPH-B-S

I am remorseful to this day. I did everything I could to make sure the LT continued the therapy as intended by her physician. I remember calling the MD in an effort to obtain another prescription for LT after explaining the unfortunate circumstance to the physician. As a Pharmacist, my first priority is and will always be patient care first. Throughout my career I held that to heart.

EIGHT CAUSE OF ACTION

(Martin Chibueze)

The NV pharmacy law requires Patient counseling for all new Prescription. Counseling on all new prescriptions also serves as my last and final check of the dispensed medication and a great opportunity to meet my patients and discuss the medication with them while sharing the benefits of the medication and further ensure compliance.

The pharmacy records showed that LT had a previous fill of the same medication two months prior. As a relief pharmacist LT was new to me and I had the opportunity to meet and greet my patients..

LT declined counseling upfront stating urgency and lateness to work. I went on to open the vial, showed LT the content, color, size and shape while confirming the strength of the medication and quantity. I went to advise LT to ask the Provider for higher dose of the medication to reduce the frequency. LT signed the electronic signature log.

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

That I do admit it is my duty and obligation to counsel my patients especially on all New Prescriptions

That I duly counsel all my patient upon filling New prescription and LT case was no exception.

That I admit to have failed to check the nature and capacity to which the electronic signature log captures and keeps the screen as part of the patient's file.

That I admit to failing to hand initial the hardcopy or any other document to indicate whether a patient accepted counseling or refused to be counseled at the time.

That I deny any form of data entry in to the computer system, or aware of additional data entry manually or otherwise in LT profile indicating "IOU" on March 24th, 2016.

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 31st day of March 2017

Martin Chibueze LIC 17555

Named Respondent case# 16-015-RPH-B-S

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FILED

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NEVADA STATE BOARD
OF PHARMACY

APR 21 2017

NEVADA STATE BOARD
OF PHARMACY

BEFORE THE NEVADA STATE BOARD OF PHARMACY

NEVADA STATE BOARD OF PHARMACY,

Petitioner,

v.

RHODA MAGLAYA, R.PH.

Certificate of Registration No. 18613,

GRISELDA RANGEL, PTT

Certificate of Registration No. PT18012

Respondents.

CASE NOS. 17-023-RPH-N

17-023-PTT-N

NOTICE OF INTENDED ACTION
AND ACCUSATION

Larry L. Pinson, in his official capacity as Executive Secretary of the Nevada State Board of Pharmacy, makes the following that will serve as both a notice of intended action under Nevada Revised Statutes (NRS) 233B.127(3), and as an accusation under NRS 639.241.

JURISDICTION

I.

The Nevada State Board of Pharmacy (Board) has jurisdiction over this matter because at the time of the alleged events, Respondent Rhoda Maglaya, R.Ph. (Ms. Maglaya), Certificate of Registration No. 18613, was a registered pharmacist with the Board, and respondent Griselda Rangel, PTT (Ms. Rangel) was a registered pharmaceutical technician in training with the Board.

II.

Nevada Administrative Code (NAC) 639.240 states, in part, that an applicant for registration as a pharmaceutical technician in training must be a high school graduate or the equivalent. The applicant must specify on the application the pharmacy where he or she will be employed (NAC 639.242(5)), and the managing pharmacist of the employing pharmacy is required to sign the Pharmaceutical Technician in Training Application validating the applicant's employment as a trainee.

III.

On March 16, 2016, the Board Office issued pharmaceutical technician in training Certificate No. PT18012 to Griselda Rangel for employment at Walmart #10-2617.

IV.

At the time of the alleged events, Ms. Maglaya was employed as the managing pharmacist at Walmart Pharmacy #10-2617.

FACTUAL ALLEGATIONS

V.

On March 3, 2017, Ms. Maglaya telephoned Mr. Pinson to inform him that she recently discovered that Griselda Rangel had falsified her Pharmaceutical Technician in Training Application dated February 26, 2016.

VI.

Ms. Maglaya stated that Ms. Rangel checked "Yes" to question 2 on the application indicating that she is a high school graduate or equivalent. Ms. Maglaya claims that approximately one year later she learned that Ms. Rangel is not a high school graduate or the equivalent. Walmart subsequently terminated Ms. Rangel's employment.

VII.

On March 24, 2017, Ms. Rangel sent an unsolicited letter to the Board Office. In the letter, Ms. Rangel purported to surrender her pharmaceutical technician in training registration (Certificate No. PT18012). She admitted that she lied on her application by indicating that she is a high school graduate or the equivalent when she is neither.

VIII.

In the letter, Ms. Rangel accepted full responsibility for the deception. She added, however, that pharmacy manager Ms. Maglaya should be held accountable as well. Ms. Rangel explained that Ms. Maglaya encouraged her to falsify the application.

IX.

On February 18, 2016, Ms. Maglaya hired Ms. Rangel as a pharmacy clerk. Within the first week of employment, Ms. Maglaya requested that Ms. Rangel complete a technician in training application.

X.

On February 26, 2016, Ms. Rangel returned the completed application to Ms. Maglaya. Ms. Rangel explained to Ms. Maglaya that she left question 2 regarding being a high school graduate or equivalent blank because she is not.

XI.

Ms. Rangel alleges that Ms. Maglaya told her to check the "Yes" box anyway, because "the Board never checks."

XII.

Ms. Rangel did as instructed and falsely marked "Yes" in the box next to question 2 indicating that she is a high school graduate or equivalent. Ms. Rangel then signed as the applicant on the signature line attesting that the information provided is true and correct.

XIII.

As the managing pharmacist, Ms. Maglaya signed Ms. Rangel's application knowing that the application contained falsified information.

XIV.

Staff employees witnessed the exchange between Ms. Rangel and Ms. Maglaya regarding the falsification of question 2 on Ms. Rangel's application. Those employees submitted statements to the Board Investigator alleging that Ms. Maglaya instructed Ms. Rangel to mark "yes" to the question regarding high school graduate or equivalent.

XV.

Ms. Maglaya denies the allegation.

XVI.

Subsequent to the submission of the falsified application and the issuance of Ms. Rangel's certificate of registration, Ms. Rangel worked at Walmart as a pharmaceutical technician in training for approximately one year.

FIRST CAUSE OF ACTION

(Respondent Rangel)

XVII.

NAC 639.240 requires that an applicant for registration as a pharmaceutical technician in training must be a high school graduate or the equivalent. By falsely attesting on her Pharmaceutical Technician in Training Application that she is a high school graduate or the equivalent, Ms. Rangel violated NAC 639.240(2)(b), which constitutes unprofessional conduct, as that term is defined in NAC 639.945(1)(h). That violation is grounds for discipline pursuant to Nevada Revised Statute (NRS) 639.210(4). Ms. Rangel's false statement is also grounds for discipline pursuant to NRS 639.281, NRS 639.210(1), (9), (10), and (12), as well as NRS 639.255.

SECOND CAUSE OF ACTION

(Respondent Maglaya)

XVIII.


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

Ms. Maglaya allowed and encouraged an employee under her direct supervision, namely, Ms. Rangel, to secure a pharmaceutical technician in training registration by making a false representation of her education credentials. As the managing pharmacist, Ms. Maglaya willfully

and knowingly signed the application falsified by Ms. Rangel. Ms. Maglaya's actions constitutes unprofessional conduct. Ms. Rangel is guilty of unprofessional conduct as that term is defined in NAC 639.945(1)(h). That violation is grounds for discipline pursuant to Nevada Revised Statute (NRS) 639.210(4) as well as NRS 639.281, NRS 639.210(1), (9), (12), and (15), and NRS 639.255.

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

Signed this 21st day of April, 2017.


Larry L. Pinson, Pharm.D., Executive Secretary
Nevada State Board of Pharmacy

NOTICE TO RESPONDENT

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

BEFORE THE NEVADA STATE BOARD OF PHARMACY

NEVADA STATE BOARD OF PHARMACY,	)	CASE NO. 17-023-RPH-N
)	
Petitioner,)	
)	
v.)	
	)	STATEMENT TO THE RESPONDENT
RHODA MAGLAYA, R.PH.	)	NOTICE OF INTENDED ACTION
Certificate of Registration No. 18613,	)	AND ACCUSATION
	)	RIGHT TO 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, a Notice of Intended Action and Accusation has been filed with the Board by the Petitioner, Larry L. Pinson, Executive Secretary for the Board, alleging grounds for imposition of disciplinary action by the Board against you, as is more fully explained and set forth in the Notice of Intended Action and Accusation served herewith and hereby incorporated reference herein.

II.

You have the right to a hearing before the Board to answer the Notice of Intended Action and Accusation and present evidence and argument on all issues involved, either personally or through counsel. Should you desire a hearing, it is required that you complete two copies of the Answer and Notice of Defense documents served herewith and file said copies with the Board within fifteen (15) days of receipt of this Statement and Notice, and of the Notice of Intended Action and Accusation served within.

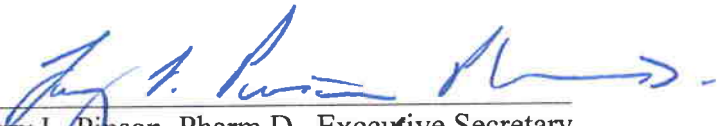
III.

The Board has scheduled your hearing on this matter for Wednesday, May 31, 2017, at 9:00 a.m. or soon thereafter. The hearing will occur at the Hyatt Place, 1790 East Plumb Lane, Reno, Nevada.

IV.

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

DATED this 21st day of April, 2017.



Larry L. Pinson, Pharm.D., Executive Secretary
Nevada State Board of Pharmacy

1 Roderic A. Carucci, Esq. (#4233)
2 Carucci and Associates
3 702 Plumas Street
4 Reno, NV 89509
5 775-323-0400
6 Attorney for Rhoda Maglaya, R.PH.

FILED

MAY 15 2017

NEVADA STATE BOARD
OF PHARMACY

BEFORE THE NEVADA STATE BOARD OF PHARMACY

NEVADA STATE BOARD OF
PHARMACY,

Petitioner,

CASE NO.: 17-023-RPH-N

v.

RHODA MAGLAYA, R.PH.
Certificate of Registration No.
18613,

Respondent.

ANSWER AND NOTICE OF DEFENSE

and REQUEST FOR HEARING

Respondent, Rhoda Maglaya, by and through counsel, Roderic A. Carucci, Esq. and the law firm of Carucci and Associates, respectfully submits the following answer and notice of defenses Respondent further requests a hearing on the matter.

1. Admit that at all relevant times, respondent was a registered pharmacist in the State of Nevada and that the Board of Pharmacy had jurisdiction over the matter.

2. Admit that paragraph 2 of the complaint accurately paraphrases the applicable statute which requires the managing pharmacist to sign the Pharmaceutical Technician in Training Application. This administrative code does not require the pharmacist to independently verify the factual accuracy of such application.

1 3. Respondent is without knowledge or information sufficient to form a belief
2 as to the truth of the averments in Paragraph 3 of the complaint.

3 4. Admit that respondent was employed by Walmart as the managing
4 pharmacist at the Winnemucca, Nevada store on March 16, 2016.

5 5. Deny that respondent spoke with Larry Pinson, Executive Secretary of the
6 Nevada Board of Pharmacy on March 3, 2017. Admit that respondent spoke to Larry
7 Pinson on March 9, 2017. Admit that respondent advised Larry Pinson on March 9, 2017,
8 that respondent recently discovered that Griselda Rangel had falsified her Pharmaceutical
9 Technician in Training Application.

10 6. Admit that Rangel falsified her Pharmaceutical Technician in Training
11 Application. Admit that respondent learned of this falsification approximately one year
12 later. Respondent became curious about Rangel's claim to be a High School graduate
13 because Rangel was unable to perform routine mathematical computations required of any
14 pharmacist or trainee. Rangel's regularly refused to take responsibility for her mistakes
15 and would regularly complain to WalMart management (open door policy) when she was
16 subjected to corrective / disciplinary action. At a WalMart meeting with management and
17 respondent on March 9, 2017, Rangel revealed for the first time that she had falsified her
18 application and did not have a High School degree. There were also issues of payroll
19 integrity and inability to get along with other employees that were addressed with Rangel
20 at the March 9, 2017, WalMart management meeting. Consistent with her past
21 behavioral patterns, Rangel attempted to deflect and blame others for her knowing
22 falsification of her application by claiming that respondent told her to falsify her
23 application. There is absolutely no independent, legally admissible, proof to support
24 Rangel's claim and she is entitled to no credibility as a witness since she admits to
25 committing perjury.

26 7. Respondent is without knowledge or information sufficient to form a belief
27 as to the truth of the averments in Paragraph 7 of the complaint. Rangel's purported
28 letter to the Board of March 24, 2017, establishes that she has committed perjury and that

1 she is not entitled to any credibility as a witness. Respondent has never seen this letter.

2 8. Deny the averments contained in this paragraph. Rangel is not accepting full
3 responsibility for her deceitful actions if she is attempting to deflect blame to others.
4 Respondent denies that she ever encouraged Rangel to lie on her application. Respondent
5 does acknowledge that there is a history or conflict with Rangel at work based upon
6 Rangel's poor performance and lack of integrity during the time of her employment. This
7 establishes a foundation Rangel's malicious desire to retaliate against respondent. There
8 is a history of conflict between respondent and Rangel in the workplace.

9 9. Admit that respondent hired Rangel as a pharmacy clerk on or about
10 February 18, 2016. Deny that respondent ever requested that Rangel complete a
11 technician training application. During the first week of Rangel's employment, Rangel
12 made a prescription error which was caught and remedied. Based upon that incident
13 alone, respondent would never have requested or encouraged Rangel to apply for a
14 technician training application.

15 10. Deny. Rangel's assertion is simply false. Respondent has no recollection as
16 to whether the High School graduation section of Rangel's application was left blank or
17 if Rangel falsely and affirmatively stated that she was a High School graduate.
18 Respondent specifically denies that Rangel explained anything to her about Rangel's
19 application, particularly the High School graduation section.

20 11. Deny. Respondent denies providing any assistance whatsoever to Rangel in
21 completing her application. Respondent never told Rangel to check the "yes" box, nor did
22 respondent ever tell Rangel that "the Board never checks." Respondent has no idea
23 whether the Board independently verifies or checks these applications or not.

24 12. Deny that "Ms. Rangel did as instructed." Respondent did not instruct
25 Rangel in any phase of the completion of Rangel's application. Rangel's application speaks
26 for itself as she apparently signed the line attesting that the information contained therein
27 was true and correct.

28 13. Deny. Respondent was the managing pharmacist at the relevant time. Deny

1 that respondent had any knowledge that Rangel's application contained false averments
2 of fact. Nothing in the "Pharmaceutical Technician in Training Application" requires the
3 managing pharmacist to independently verify the truth of the statements contained
4 therein. The signature of the managing pharmacist is contained in the section "requesting
5 registration at the following pharmacy." I appears to be an endorsement that the
6 application is being filed for employment at the managing pharmacist's pharmacy. The
7 questions pertaining to education are containing in an entirely separate block of the
8 application, contained within a solid line box, and below the signature section for the
9 managing pharmacist. Nothing in the NAC requires independent verification by the
10 managing pharmacist of the information set forth in the application by the preparer and
11 signer of the application.

12 14. Deny that there are any independent witnesses to a verbal transaction
13 between respondent and Rangel on February 26, 2016.

14 15. Admit.

15 16. Admit.

16 WHEREFORE, respondent prays for the following relief:

17 1. That both the First and Second Causes of Action be dismissed with prejudice
18 as the Board cannot meet its burden of proof by clear and convincing evidence.

19
20 **AFFIRMATIVE DEFENSES**

21 1. NAC 639.240 requires the managing pharmacist to sign the Pharmaceutical
22 Technician in Training Application, it does not require the managing pharmacist signing
23 the application to independently verify the facts set forth therein by the applicant.

24 2. During the March 9, 2017 telephone conversation between respondent and
25 Larry Pinson, respondent was advised: "This is a lesson learned for you. From now on
26 you need to verify credentials. We will not go after you at this time." Respondent restated
27 Larry Pinson's statements in a return email dated March 13, 2017.

28 3. That Rangel not entitled to any credibility as a witness as she has admitted

1 to perjury.

2 4. Rangel was unable to perform routine job functions, including mathematical
3 calculations, which caused respondent to investigate her background with management
4 at Walmart and to participate in disciplinary proceedings regarding Rangel.

5 5. Rangel had a history of repeated disciplinary issues / frictions with the
6 employer; she filed grievances and has a motive to retaliate; she has a motive to lie and
7 is not entitled to any credibility as a witness.

8 DATED: May 15, 2017

9 Carucci & Associates
10 702 Plumas Street
11 Reno, Nevada 89509
12 (775) 323-0400

13 By: 

14 Roderic A. Carucci, Esq.
15 Attorney for Rhoda Maglaya
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CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of Carucci & Associates and on May 15, 2017, I served a true and correct copy of:

Answer and Notice of Defense and Request for Hearing

by:

_____ Placing an original or true copy thereof in a sealed envelope, postage prepaid for collection and mailing in the United States Mail at Reno, Nevada

X Personal Delivery

_____ Facsimile to the following number: _____

_____ Reno Carson Messenger Service


_____ Certified Mail, Return Receipt Requested

_____ E-Flex filing system

_____ Electronic mail addressed to:

addressed to:

Nevada State Board of Pharmacy
431 West Plumb Lane
Reno, NV 89509


Bryttanie McNeff
Carucci and Associates

BEFORE THE NEVADA STATE BOARD OF PHARMACY

NEVADA STATE BOARD OF PHARMACY,	)	CASE NO. 17-023-PTT-N
)	
Petitioner,)	
)	
v.)	
)	
GRISELDA RANGEL, PTT	)	ANSWER AND NOTICE
Certificate of Registration No. PT18012,	)	OF DEFENSE
)	
Respondents.)	
	/	

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 _____, 2017.

GRISELDA RANGEL, PTT

APR 26 2017

NEVADA STATE BOARD
OF PHARMACY

BEFORE THE NEVADA STATE BOARD OF PHARMACY

NEVADA STATE BOARD OF PHARMACY,	)	CASE NO. 17-035-PT-N
)	
Petitioner,)	
v.)	
	)	NOTICE OF INTENDED ACTION
LEAH SNIDOW, PT	)	AND ACCUSATION
Certificate of Registration No. PT16388,)	
)	
Respondent.	/	

Larry L. Pinson, in his official capacity as Executive Secretary of the Nevada State Board of Pharmacy, makes the following that will serve as both a notice of intended action under Nevada Revised Statutes (NRS) 233B.127(3), and as an accusation under NRS 639.241.

JURISDICTION

I.

The Nevada State Board of Pharmacy (Board) has jurisdiction over this matter because Respondent Leah Snidow, PT (Ms. Snidow), Certificate of Registration No. PT16388, was a registered pharmaceutical technician with the Board at the time of the events alleged herein.

FACTUAL ALLEGATIONS

II.

In March 2017, Walgreens Pharmacy #2662 (Walgreens) notified Board Staff that it terminated Ms. Snidow from her employment as a pharmaceutical technician. Walgreens terminated Ms. Snidow's employment for diversion of controlled substances.

III.

An internal review conducted by a Walgreens Asset Protection Manager in February 2017, identified shortages of hydrocodone/APAP 10-325.

IV.

A subsequent investigation by Walgreens identified Ms. Snidow on closed circuit

television (CCTV) placing drugs in her pocket on March 6, 2017.

V.

On March 16, 2017, the Walgreens Asset Protection Manager interviewed Ms. Snidow. Ms. Snidow initially denied involvement with the theft of any drugs from Walgreens.

VI.

During the interview, the Walgreens Asset Protection Manager explained to Ms. Snidow that she was observed on CCTV placing drugs in her pocket while filling a prescription. Ms. Snidow then admitted to diverting hydrocodone 10/325 mg. and hydrocodone 5/325 mg. tablets since December 2016.

VII.

Ms. Snidow indicated that her boyfriend was released from jail in December 2016, and he put pressure on her to divert the drugs.

VIII.

Walgreens reported that Ms. Snidow diverted approximately thirty (30) hydrocodone 10/325 mg. tablets and three-hundred and fifty-two (352) hydrocodone 5/325 mg. tablets.

IX.

Walgreens reported the theft to law enforcement.

FIRST CAUSE OF ACTION

X.

Nevada Revised Statutes (NRS) 453.331(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.” NRS 639.210(12) says that a violation or attempt to violate “any law or regulation relating to drugs, the . . . distribution of drugs or the practice of pharmacy . . . committed by the holder of a certificate, license [or] registration” is grounds for suspension or revocation of any certificate, license or permit licensed by the Board.

In diverting controlled substances for personal use as alleged herein, Respondent Ms. Snidow, PT, Certificate of Registration No. PT16388, violated NRS 453.331(1)(d), and is subject to discipline pursuant to NRS 639.210(12), as well as NRS 639.255.

SECOND CAUSE OF ACTION

XI.

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]”. NRS 639.210(12) says that a violation or attempt to violate “any law or regulation relating to drugs, the . . . distribution of drugs or the practice of pharmacy . . . committed by the holder of a certificate, license [or] registration . . .” is grounds for suspension or revocation of any certificate, license or permit licensed by the Board.

In diverting controlled substances for personal use, as alleged herein, Respondent Ms. Snidow, PT, Certificate of Registration No. PT16388, violated NRS 453.336(1), and is subject to discipline pursuant to NRS 639.210(12), as well as NRS 639.255.

THIRD CAUSE OF ACTION

XII.

Nevada Administrative Code (NAC) 639.945(1)(g) states that “[s]upplying 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.” NRS 639.210(4) says that 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.

In diverting controlled substances as alleged herein, Respondent Ms. Snidow, PT, Certificate of Registration No. PT16388, violated NAC 639.945(1)(g), is guilty of unprofessional conduct and is subject to discipline pursuant to NRS 639.210(4), as well as NRS 639.255.

FOURTH CAUSE OF ACTION


XIII.

NAC 639.945(1)(h) states that “[p]erforming 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.” NRS 639.210(4) says that 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.

In diverting controlled substances as alleged herein, Respondent Ms. Snidow, PT, Certificate of Registration No. PT16388, violated NAC 639.945(1)(h), is guilty of unprofessional conduct and is subject to discipline pursuant to NRS 639.210(4), as well as NRS 639.255.

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 April, 2017.


Larry L. Pinson, Pharm.D., Executive Secretary
Nevada State Board of Pharmacy

NOTICE TO RESPONDENT

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

BEFORE THE NEVADA STATE BOARD OF PHARMACY

NEVADA STATE BOARD OF PHARMACY,	)	CASE NO. 17-035-PT-N
)	
Petitioner,)	
v.)	
)	
LEAH SNIDOW, PT	)	ANSWER AND NOTICE
Certificate of Registration No. PT16388,	)	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").

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 _____, 2017.

LEAH SNIDOW, PT

BEFORE THE NEVADA STATE BOARD OF PHARMACY

NEVADA STATE BOARD OF PHARMACY,

Petitioner,

v.

DAVID JULIAN, MD

Certificate of Registration No. CS12190

Respondents.

CASE NO. 17-037-CS-N

NOTICE OF INTENDED
ACTION AND ACCUSATION

Larry L. Pinson, in his official capacity as Executive Secretary of the Nevada State Board of Pharmacy, makes the following that will serve as both a notice of intended action under Nevada Revised Statutes (NRS) 233B.127(3), and as an accusation under NRS 453.241 and NRS 639.241.

I.

The Nevada State Board of Pharmacy (Board) has jurisdiction over this matter because, at the time of the events alleged herein, Respondent David Julian, MD, Certificate of Registration No. CS12190, had a Controlled Substance Registration with the Board.

II.

NRS 453.256(2) states that a controlled substance included in schedule II may be dispensed without the written prescription of a practitioner only in an emergency, as defined by regulation of the Board, upon oral prescription of a practitioner, reduced to writing promptly and in any case within 72 hours, signed by the practitioner and filed by the pharmacy.

III.

Similarly, NAC 453.420 says that “[i]n an emergency situation, a pharmacist may dispense a controlled substance listed in schedule II upon receiving the oral authorization of a prescribing individual practitioner” under specific conditions articulated in the regulation. The regulation further states:

The prescribing practitioner, *within 72 hours* after authorizing an emergency oral prescription, *shall cause a written prescription* for the emergency quantity prescribed *to be delivered to the dispensing pharmacist*. The written prescription may be delivered to the pharmacist in

person or by mail. If the written prescription is delivered by mail, it must be postmarked within the 72-hour period. Upon receipt, the dispensing pharmacist shall attach this prescription to the oral emergency prescription which had earlier been reduced to writing.

NAC 453.420(2) (emphasis added.)

IV.

In March 2016, Board Staff began receiving notices indicating that Dr. Julian was not providing CVS/Omnicare of Reno Nevada (CVS/Omnicare) with signed, written prescriptions within 72 hours after authorizing emergency oral schedule II controlled substance prescriptions.

V.

On April 20, 2016, Board Staff sent Dr. Julian a letter informing him that Board Staff had received numerous complaints alleging that on multiple occasions he authorized an emergency oral prescription for a schedule II controlled substance without providing the pharmacy a subsequent written prescription. In the letter, Board Staff directed Dr. Julian to provide the required written prescriptions to the pharmacy. The chart below summarizes the prescriptions that CVS/Omnicare attributed to Mr. Julian, which he had failed to complete.

VI.

<i>Date Reported</i>	<i>Date Ordered</i>	<i>Prescriber</i>	<i>Rx Number</i>
3/22/2016	2/29/2016	Julian, David	R45611723
3/22/2016	3/1/2016	Julian, David	R45626561
3/22/2016	3/2/2016	Julian, David	R45638439
3/31/2016	3/16/2016	Julian, David	R45827173
3/31/2016	3/16/2016	Julian, David	R45822902
3/31/2016	3/16/2016	Julian, David	R45837354
4/25/2016	4/6/2016	Julian, David	R46097170
4/25/2016	4/7/2016	Julian, David	R46106819
4/25/2016	4/7/2016	Julian, David	R46106829
4/25/2016	4/8/2016	Julian, David	R46130890
4/25/2016	4/10/2016	Julian, David	R46140263
4/25/2016	4/12/2016	Julian, David	R46165447

VII.

On November 15, 2016, Board Staff sent Dr. Julian a second notice again notifying him that he

is not in compliance with the law as to his emergency phoned-in schedule II controlled substance prescriptions. In the letter, Board Staff included an additional list of prescriptions that CVS/Omnicare reported as incomplete since the April 20, 2016 letter. Board Staff again directed Dr. Julian to provide the required written documentation to the pharmacy.

VIII.

As recently as April 11, 2017, Board Staff continued to receive complaints that Dr. Julian is not providing written prescriptions for the emergency schedule II controlled substance prescriptions that he calls in to pharmacies within the 72 hour period required by law. To date, there are a total of sixty-eight prescriptions CVS/Omnicare attributes to Dr. Julian, which remain incomplete.


FIRST CAUSE OF ACTION

IX.

As a practitioner who is registered pursuant to Nevada Revised Statutes NRS 453.226 and NRS 453.231 and who failed to provide the dispensing pharmacy a written prescription within 72 hours after issuing up to sixty-eight (68) oral emergency prescriptions for a schedule II controlled substance, Dr. Julian violated NRS 453.256(2)(a) and Nevada Administrative Code (NAC) 453.420(2). For each violation, if proven, Dr. Julian is guilty of a category E felony pursuant to NRS 453.256(8). Additionally, his registration is subject to suspension or revocation pursuant to NRS 453.236(1)(d), NRS 453.231(1)(b) and (h), as well as NRS 639.255.

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

Signed this 27th day of April, 2017


Larry L. Pinson, Pharm.D., Executive Secretary
Nevada State Board of Pharmacy

NOTICE TO RESPONDENT

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

BEFORE THE NEVADA STATE BOARD OF PHARMACY

NEVADA STATE BOARD OF PHARMACY,)	
	)	CASE NO. 17-037-CS-N
Petitioner,)	
v.)	
	)	ANSWER AND NOTICE
DAVID JULIAN, MD	)	OF DEFENSE
Certificate of Registration No. , CS12190)	
)	
Respondent.)	
	/	

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

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

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

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

DATED this ____ day of April, 2017.

DAVID JULIAN, MD