

1 **BEFORE THE BOARD OF MEDICAL EXAMINERS**
2 **OF THE STATE OF NEVADA**

3 * * * * *

4
5 **In the Matter of Charges and Complaint**

Case No. 21-50908-1

6 **Against:**

7 **DAVID POTTER, M.D.,**

8 **Respondent.**

9
10
11 **FILED**
12 **NOV 12 2021**
13 **NEVADA STATE BOARD OF**
14 **MEDICAL EXAMINERS**
15 **By: [Signature]**

16 **COMPLAINT**

17 The Investigative Committee¹ (IC) of the Nevada State Board of Medical Examiners
18 (Board), by and through BRANDEE MOONEYHAN, J.D., Deputy General Counsel and attorney
19 for the IC, having a reasonable basis to believe that DAVID POTTER, M.D., (Respondent) violated
20 the provisions of Nevada Revised Statutes (NRS) Chapter 630 and Nevada Administrative Code
21 (NAC) Chapter 630 (collectively, the Medical Practice Act), hereby issues its Complaint, stating the
22 IC's charges and allegations as follows:

23 1. Respondent was at all times relative to this Complaint a medical doctor holding an
24 active license to practice medicine in the State of Nevada (License No. 18965). Respondent was
25 originally licensed by the Board on July 1, 2019.

26 2. On October 23, 2019, Respondent held an active Nevada Controlled Substance
27 Registration, Certificate No. CS28902, issued by the Nevada State Board of Pharmacy (Pharmacy
28 Board). Respondent did not renew his Controlled Substance Registration, and it expired on
October 31, 2020.

3. On October 23, 2019, Respondent was employed by Associated Anesthesiologists
of Reno and working at Northern Nevada Medical Center (NNMC). On that date, Respondent
acquired from the Pyxis automated medication dispensing system at NNMC three (3) vials of

¹ The Investigative Committee of the Nevada State Board of Medical Examiners, at the time this formal
Complaint was authorized for filing, was composed of Board members Victor M. Muro, M.D., Weldon Havins, M.D.,
and Ms. April Mastroluca.

1 diphenhydramine for his personal use. When confronted by a supervisor, Respondent admitted to
2 such acquisition and immediately resigned, which resulted in the automatic surrender of his
3 clinical privileges at NNMC.

4 4. On or about April 1, 2021, Respondent signed a written admission that he diverted
5 the three (3) vials of diphenhydramine for his personal use on October 23, 2019.

6 5. On September 3, 2021, the Pharmacy Board found that by diverting dangerous
7 drugs on October 23, 2019, Respondent violated, attempted to violate, assisted or abetted in the
8 violation of, or conspired to violate NRS 454.311(1), NRS 454.316(1), NRS 454.346(1), and/or
9 NRS 454.351(1), and engaged in unprofessional conduct and conduct contrary to the public
10 interest pursuant to NAC 639.945(1)(g) and NAC 639.945(1)(h).

11 **COUNT I**

12 **NRS 630.306(1)(b)(3) - Violation of Statutes and Regulations of the**
13 **Nevada State Board of Pharmacy**

14 6. All of the allegations contained in the above paragraphs are hereby incorporated by
15 reference as though fully set forth herein.

16 7. Respondent is a practitioner as defined by NRS 639.0125(1), as a physician who
17 holds a license to practice medicine in the State of Nevada.

18 8. NRS 630.306(1)(b)(3) provides that engaging in conduct that violates a provision
19 of Chapter 639 of NRS, or a regulation adopted by the Pharmacy Board pursuant thereto, that is
20 applicable to a licensee who is a practitioner, as defined in NRS 639.0125, is grounds for initiating
21 discipline against a licensee.

22 9. NRS 639.210(12) prohibits violating, attempting to violate, assisting or abetting in
23 the violation of, or conspiring to violate any provisions of Chapter 639 of NRS or any law or
24 regulation relating to drugs, the manufacture or distribution of drugs or the practice of pharmacy.

25 10. NAC 639.945(1)(g) provides that diverting drugs constitutes unprofessional
26 conduct or conduct contrary to the public interest.

27 ///

28 ///

1 11. NAC 639.945(1)(h) provides that performing or in any way being a party to any
2 fraudulent or deceitful practice or transaction constitutes unprofessional conduct or conduct
3 contrary to the public interest.

4 12. By diverting diphenhydramine for his personal use, Respondent violated
5 NRS 639.210(12), NAC 639.945(1)(g), and NAC 639.945(1)(h).

6 13. By reason of the foregoing, Respondent is subject to discipline by the Board as
7 provided in NRS 630.352.

8 **WHEREFORE**, the Investigative Committee prays:

9 1. That the Board give Respondent notice of the charges herein against him and give
10 him notice that he may file an answer to the Complaint herein as set forth in
11 NRS 630.339(2) within twenty (20) days of service of the Complaint;

12 2. That the Board set a time and place for a formal hearing after holding an Early
13 Case Conference pursuant to NRS 630.339(3);

14 3. That the Board determine what sanctions to impose if it determines there has been
15 a violation or violations of the Medical Practice Act committed by Respondent;

16 4. That the Board award fees and costs for the investigation and prosecution of this
17 case as outlined in NRS 622.400;

18 5. That the Board make, issue and serve on Respondent its findings of fact,
19 conclusions of law and order, in writing, that includes the sanctions imposed; and

20 6. That the Board take such other and further action as may be just and proper in these
21 premises.

22 DATED this 12th day of November, 2021.

23 INVESTIGATIVE COMMITTEE OF THE
24 NEVADA STATE BOARD OF MEDICAL EXAMINERS

25 By:



26 BRANDEE MOONEYHAN, J.D.
27 Deputy General Counsel
28 9600 Gateway Drive
Reno, NV 89521
Tel: (775) 688-2559
Email: mooneyhanb@medboard.nv.gov
Attorney for the Investigative Committee

1 **CERTIFICATE OF SERVICE**

2 I hereby certify that I am employed by the Nevada State Board of Medical Examiners and
3 that on the 12th day of November, 2021, I served a file-stamped copy of the foregoing
4 **COMPLAINT** via U.S. Certified Mail, to the following parties:

5 DAVID POTTER M.D.
6 7040 Buckhorn Circle
7 Colorado Springs, CO 80919
8 *Tracking No.:* 9171 9690 0935 0252 1579 62

9 Courtesy copy by electronic mail to:

10 ERIC STEINER, ESQ.
11 eric@gbsbattorneys.com

12 DATED this 12th day of November, 2021.

13 
14 _____
15 MERCEDES FUENTES
16 Legal Assistant
17 Nevada State Board of Medical Examiners
18
19
20
21
22
23
24
25
26
27
28