

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. 22-30509-1

6 **Against:**

7 **JEFF CHEN, M.D.,**

8 **Respondent.**

FILED

FEB - 1 2022

**NEVADA STATE BOARD OF
MEDICAL EXAMINERS**

By: 

9
10 **COMPLAINT**

11 The Investigative Committee¹ (IC) of the Nevada State Board of Medical Examiners
12 (Board), by and through BRANDEE MOONEYHAN, J.D., Deputy General Counsel and attorney
13 for the IC, having a reasonable basis to believe that JEFF CHEN, M.D., (Respondent) violated the
14 provisions of Nevada Revised Statutes (NRS) Chapter 630 and Nevada Administrative Code (NAC)
15 Chapter 630 (collectively, the Medical Practice Act), hereby issues its Complaint, stating the IC's
16 charges and allegations as follows:

17 1. Respondent was at all times relative to this Complaint a medical doctor holding an
18 active license to practice medicine in the State of Nevada (License No. 13095). Respondent was
19 originally licensed by the Board on April 27, 2009.

20 2. Respondent also holds an active Nevada Controlled Substance Registration,
21 Certificate No. CS18013, issued by the Nevada State Board of Pharmacy (Pharmacy Board).

22 3. On May 26, 2020, the Pharmacy Board filed a "Notice of Intended Action and
23 Accusation" (Pharmacy Board Accusation) alleging that in December 2019, Respondent was the
24 medical director of Breathe Bar in Reno, Nevada, and that in such capacity he violated various
25 statutes and regulations within the Pharmacy Board's jurisdiction.

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28 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 Bret W. Frey, M.D., Chowdhury H. Ahsan.,
M.D., Ph.D., FACC, and Col. Eric D. Wade, USAF (Ret.).

1 4. In pertinent part, the Pharmacy Board Accusation alleged that with Respondent's
2 knowledge and pursuant to his direction, registered nurses employed at Breathe Bar administered
3 to patients dangerous drugs through intravenous therapy and/or injections without Respondent's
4 direct supervision and without Respondent having written a patient- and medication-specific chart
5 order.

6 5. The Pharmacy Board Accusation also alleged that Respondent directed the
7 registered nurses at Breathe Bar to obtain, access, possess, and store dangerous drugs from
8 Breathe Bar's inventory when he was not on site.

9 6. NRS 454.213(1)(c) provides that dangerous drugs may be possessed and
10 administered by a registered nurse "at the direction of a prescribing physician . . . or pursuant to a
11 chart order, for administration to a patient at another location."²

12 7. NRS 454.221 prohibits the furnishing of dangerous drugs without a legal
13 prescription, except under certain exceptions not applicable here. Specifically, a practitioner like
14 Respondent may furnish dangerous drugs only to his patients, *see* NRS 454.221(2)(a), and a
15 registered nurse may furnish dangerous drugs only while participating in a health program
16 approved by the Pharmacy Board, *see* NRS 454.221(2)(c).

17 8. NRS 454.316 renders it unlawful to possess a dangerous drug "except that
18 furnished to the person by a pharmacist pursuant to a legal prescription or by a practitioner."

19 9. The Pharmacy Board Accusation asserted that by "allowing Breathe Bar's RN
20 [registered nurse] staff to operate Breathe Bar and to obtain, access, possess, administer and/or
21 store dangerous drugs when he was not on site, before he examined the patient, before he wrote a
22 patient-specific order and without his direct supervision," Respondent violated, attempted to
23 violate, assisted or abetted in the violation of, or conspired to violate, among other statutes,
24 NRS 454.213(1), NRS 454.221, and NRS 454.316.

25 10. The Pharmacy Board Accusation also alleged that Respondent permitted opened,
26 undated, multi-dose injectables to be used for the treatment of patients at Breathe Bar.

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28 ² NRS 454.213(1)(d) allows a registered nurse "[e]mployed by a health care agency or health care facility
that is authorized to provide emergency care, or to respond to the immediate needs of a patient, in the residence of the
patient" and "[a]cting under the direction of the medical director of that agency" to possess and administer dangerous
drugs "[i]n accordance with applicable regulations."

1 11. NAC 639.67057(2) sets forth requirements for multi-dose drug containers,
2 including that if the seal of a multi-dose container is breached, the contents may be used within
3 twenty-eight (28) days after the breach of the seal occurred; otherwise, it may not be used and
4 must be destroyed. *See* NAC 639.67057(2)(b), (3).

5 12. The Pharmacy Board Accusation asserted that by “failing to follow procedures to
6 reflect expiration dates on opened multi-dose injectable vials,” Respondent violated, assisted or
7 abetted in the violation of, or conspired to violate NAC 639.67057(2).

8 13. On or about July 13, 2020, Respondent filed an Answer and Notice of Defense to
9 the Pharmacy Board Accusation.

10 14. As of May 8, 2021, the matter against Respondent arising from Pharmacy Board
11 Accusation remained pending; on May 8, 2021, Respondent completed his 2021 application for
12 biennial renewal of his medical license. Despite the pending Pharmacy Board matter, on his 2021
13 renewal application, Respondent falsely answered “no” to a question that asked in-part whether
14 during the period of July 1, 2019, though June 30, 2021, or since his last renewal, he had been “a)
15 asked to respond to an investigation; b) notified that [he] was under investigation for;
16 c) investigated for; d) charged with; or e) convicted of any violation of a statute, rule or regulation
17 governing [his] practice as a physician by any medical licensing board, hospital, medical society,
18 governmental entity or agency other than the Nevada State Board of Medical Examiners.”

19 15. On or about July 14, 2021, Respondent and the Pharmacy Board entered into a
20 “Stipulation and Order” (Pharmacy Board Stipulation) whereby Respondent acknowledged that
21 counsel for the Pharmacy Board “could present such evidence at an administrative hearing to
22 establish a factual basis” for violations against him, specifically, that he: (1) failed at times to put
23 into practice policies and procedures within Breath Bar to ensure that dangerous drugs were
24 stored, possessed, and administered to patients in compliance with NRS 454.213(1), NRS 454.221
25 and/or NRS 454.316; and (2) failed in one instance to record an expiration date on an opened
26 multi-dose injectable vial, in violation of NAC 639.67057(2).

27 16. Respondent accepted the Pharmacy Board Stipulation “as a caution regarding his
28 duties and responsibilities as a practitioner when authorizing registered nurses to possess and

1 administer dangerous drugs to patients,” and agreed to pay a fine and also to reimburse the
2 Pharmacy Board for a portion of the costs incurred in investigating and prosecuting the matter.

3 **COUNT I**

4 **NRS 630.306(1)(b)(3) – Violation of Statutes and Regulations of the**
5 **Nevada State Board of Pharmacy**

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

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

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

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

17 21. Respondent violated NRS 639.210(12) by violating laws relating to drugs and/or
18 the distribution of drugs, specifically, NRS 454.213(1), NRS 454.221 and/or NRS 454.316, when
19 he failed to ensure that dangerous drugs were legally stored, possessed, and administered to
20 patients at Breathe Bar.

21 22. Respondent violated NAC 639.67057(2) by failing to record an expiration date on
22 an opened multi-dose vial at Breathe Bar.

23 23. By reason of the foregoing, Respondent is subject to discipline by the Board as
24 provided in NRS 630.352.

25 **COUNT II**

26 **NRS 630.304(1) – Misrepresentation in Obtaining or Renewing License**

27 24. All of the allegations contained in the above paragraphs are hereby incorporated by
28 reference as though fully set forth herein.

1 25. NRS 630.304(1) provides that obtaining, maintaining or renewing or attempting to
2 obtain, maintain or renew a license to practice medicine by bribery, fraud or misrepresentation or
3 by any false, misleading, inaccurate or incomplete statement constitutes grounds for initiating
4 disciplinary action.

5 26. On his 2021 application to renew his medical license, completed May 8, 2021,
6 Respondent falsely answered “no” to a question asking whether he had been “a) asked to respond
7 to an investigation; b) notified that [he was] under investigation for; c) investigated for; d) charged
8 with; or e) convicted of any violation of a statute, rule or regulation governing [his] practice as a
9 physician by any medical licensing board, hospital, medical society, governmental entity or
10 agency other than the Nevada State Board of Medical Examiners” from July 1, 2019, through
11 June 30, 2021, when in fact the Pharmacy Board filed an Accusation against him on
12 May 26, 2020, charging him with violating statutes and regulations by his actions as a physician
13 with respect to dangerous drugs.

14 27. By reason of the foregoing, Respondent is subject to discipline by the Board as
15 provided in NRS 630.352.

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

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

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

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

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

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

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

DATED this 1st day of February, 2022.

INVESTIGATIVE COMMITTEE OF THE
NEVADA STATE BOARD OF MEDICAL EXAMINERS

By: Brandee Mooneyhan
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VERIFICATION

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STATE OF NEVADA)
 : ss.
COUNTY OF WASHOE)

Bret W. Frey, M.D., having been duly sworn, hereby deposes and states under penalty of perjury that he is the Chairman of the Investigative Committee of the Nevada State Board of Medical Examiners that authorized the Complaint against the Respondent herein; that he has read the foregoing Complaint; and that based upon information discovered in the course of the investigation into a complaint against Respondent, he believes that the allegations and charges in the foregoing Complaint against Respondent are true, accurate and correct.

DATED this 1st day of February, 2022.

INVESTIGATIVE COMMITTEE OF THE
NEVADA STATE BOARD OF MEDICAL EXAMINERS

By:



BRET W. FREY, M.D.
Chairman of the Investigative Committee