

FILED

SEP 06 2023

NEVADA STATE BOARD
OF PHARMACY

BEFORE THE NEVADA STATE BOARD OF PHARMACY

NEVADA STATE BOARD OF PHARMACY,

Petitioner,

v.

**SANDRA LE, RPH,
Certificate of Registration No. 18241,**

**KHANH V. PHAM, RPH,
Certificate of Registration No. 16235, and**

**CVS PHARMACY #8804,
Pharmacy License No. PH01093**

Respondents.

**Case Nos. 19-131-RPH-A-S
19-131-RPH-B-S
19-131-PH-S**

**AMENDED FINDINGS OF FACT,
CONCLUSIONS OF LAW,
AND ORDER**

This matter came before the Nevada State Board of Pharmacy ("Board") at its regularly scheduled meeting on Wednesday September 6, 2023. Greg Zunino, Esq., prosecuted the case before the Board. Respondent Sandra Le ("Respondent Le"), Certificate of Registration No. 18241, appeared without counsel. Respondent Khanh V. Pham ("Respondent Pham"), Certificate of Registration No. 16235, also appeared without counsel. Respondent CVS Pharmacy #8804 ("Respondent CVS") appeared by and through its attorney of record, William J. Stilling, Esq., who is with the firm of Stilling and Harrison. The Board heard the case, and based on the evidence presented, the Board issues the following Amended Findings of Fact, Conclusions of Law, and Order ("Order").

FINDINGS OF FACT

The Board hereby adopts, as findings of fact, the allegations stated in the Notice of Intended Action and Accusation filed in this case on April 21, 2023. The Board finds that probative evidence exists in the record to establish the facts as stated in each of those allegations as reproduced below:

1. Respondent Le holds a certificate of registration issued by the Board pursuant to NRS 639.127, authorizing her to engage in the practice of pharmacy within the state of Nevada.
2. Respondent Pham holds a certificate of registration issued by the Board pursuant to NRS 639.127, authorizing him to engage in the practice of pharmacy within the state of Nevada.

3. Respondent CVS holds a license issued by the Board pursuant to NRS 639.230, authorizing Respondent CVS to operate a pharmacy located 1408 West Craig Road in North Las Vegas, Nevada.

4. At the time of the violations described below, Respondent Le and Respondent Pham were Nevada registered pharmacists engaged in the practice of pharmacy at a business location operated by Respondent CVS in North Las Vegas, Nevada.

5. On or about July 17, 2019, Respondent Le processed a prescription for patient TC. The prescription was for Endometrin, a medication containing progesterone. Patient TC's physician had written the prescription with instructions to fill a quantity of forty-two suppositories to be inserted vaginally by patient TC three times per day in connection with *in vitro* fertilization ("IVF"). Endometrin is used to increase the level of progesterone in patients undergoing fertility treatments.

6. On or about July 17, 2019, Respondent Le processed another prescription for patient TC in connection with her IVF. Patient TC's physician had written that prescription for a quantity of four 250mg tablets of Zithromax, an antibiotic. The Zithromax prescription was written with instructions for patient TC to take two tablets with dinner on the evening before the IVF procedure and two tablets with breakfast on the morning of the IVF procedure.

7. Pharmaceutical Technician Haydee Martinez (Martinez), the holder of license no. PT16676, performed the data entry for each of the prescriptions identified in paragraphs 5 and 6 above. Respondent Le performed the verifications for each of these prescriptions.

8. Regarding the prescription described in paragraph 5 above, Martinez mistakenly identified the medication as misoprostol, believing that misoprostol was the generic name for Endometrin. Martinez entered instructions for patient TC to insert one misoprostol tablet vaginally three times per day as directed by her physician. When inserted vaginally, misoprostol is used to terminate a pregnancy, not to assist with fertility treatments.

9. Regarding the prescription described in paragraph 6 above, Pharmaceutical Technician Vanessa Cardozo (Cardozo), the holder of license no. PT07016, correctly identified the medication and

the prescribed dose, but she mistakenly entered the prescribed quantity as six 250 mg tablets. Cardozo also entered incorrect dosage instructions, advising patient TC to “take two tablets by mouth today, then take 1 tablet daily for 4 days.” This conflicted with the physician’s instructions to take two tablets with dinner on the evening before the IVF procedure and two tablets with breakfast on the morning of the IVF procedure.

10. Respondent Le verified each of the prescriptions identified in paragraphs 5 and 6 above. Respondent Le did not discover the data entry mistakes by Martinez or Cardozo. Notably, Respondent Le overrode a system warning pertaining to the data entry error relating to misoprostol. The warning indicated that the stated dose was incorrect and that the medication was contraindicated for persons of child-bearing age. Despite the warning, Respondent verified the prescription as entered.

11. On or about July 20, 2019, Respondent Pham was the registered pharmacist on duty at CVS Pharmacy #8804, when patient TC arrived to pick up her prescription medications prior to her IVF procedure. Respondent Pham neglected to counsel patient TC before she left the pharmacy with an incorrect prescription for misoprostol. Had Respondent Pham properly counseled patient TC, the counseling would have alerted patient TC that she had been given the wrong medication.

12. On or about July 23, 2019, patient TC’s physician performed the scheduled IVF procedure, transferring two embryos into patient TC’s uterus. Thereafter, in accordance with the instructions that Respondent Le had incorrectly prepared for her, patient TC vaginally inserted the misoprostol that Respondent Le had incorrectly supplied to her. This caused patient TC to suffer from stomach cramps, which in turn prompted patient TC to search for relevant information on the internet. When she discovered that misoprostol is used to terminate pregnancies, she filed a complaint with the Board.

13. Following receipt of patient TC’s complaint, Investigator Dena McClish conducted an investigation. Respondent Le and Respondent CVS fully cooperated with the investigation, providing business records that confirm the allegations stated above. Respondent Pham had left the employ of CVS Pharmacy by the time of the investigation.

CONCLUSIONS OF LAW

14. On or about July 17, 2019, Respondent Le engaged in unprofessional conduct as described above. Respondent's Le's conduct was unprofessional because: she failed to strictly follow the instructions of patient TC's physician as to the filling of patient TC's prescriptions for Endometrin and Zithromax; she failed to properly verify the data that the pharmacy technician had entered in the pharmacy management system regarding patient TC's prescriptions for Endometrin and Zithromax; and/or she failed to confer with patient TC's physician concerning errors that should have been readily apparent to her after seeing the system warning as described in paragraph 10 above. Any of these mistakes amounts to unprofessional conduct for which the Board may impose discipline pursuant to NRS 639.210(4), NRS 639.255(1), NAC 639.945, and NAC 639.955.

15. On or about July 17, 2019, Respondent Le failed to adequately supervise the pharmacy technician who made the data entry mistakes as described above. The pharmacy technician was under Respondent Le's supervision at the time. Pursuant to NAC 639.702, the pharmacy technician's errors and/or omissions may be attributed to Respondent Le. Accordingly, the Board may discipline Respondent Le pursuant to NRS 639.210(4), NRS 639.255(1), NRS 639.945(1), and NAC 639.955.

16. On or about July 20, 2019, Respondent Pham was the pharmacist on duty responsible for counseling patient TC when she arrived at CVS Pharmacy to pick up her prescriptions. By neglecting to counsel patient TC before she left the pharmacy with an incorrect prescription for misoprostol, Respondent Pham violated the provisions NRS 639.707(1). Accordingly, the Board may discipline Respondent Pham pursuant to NRS 639.210(12), NRS 639.255(1), and NAC 639.955.

17. Between July 17 and 20, 2019, Respondent CVS employed Respondent Le and Respondent Pham as pharmacists. Pursuant to NRS 639.230(5), NAC 639.702, and NAC 639.945(2), Respondent CVS is liable for their unprofessional conduct and/or statutory violations as described above. Accordingly, the Board may discipline Respondent CVS pursuant to NRS 639.210, NRS 639.255, and NAC 639.955.

ORDER

NOW, THEREFORE, THE BOARD ORDERS THE FOLLOWING:

AS TO RESPONDENT LE:

Respondent Le's certificate of registration no. 18241 is hereby REVOKED, provided that the execution of the foregoing revocation order shall be STAYED and Respondent Le shall be permitted to engage in the practice of pharmacy in Nevada on the following conditions:

- a) Within twelve (12) months after the effective date of this Order, Respondent Le shall obtain at least five (5) continuing education credits related to the practice of pharmacy with an emphasis on safe medication practices. Such credits are in addition to the credits that Respondent Le must otherwise obtain pursuant to NAC 639.330.
- b) Within thirty (30) days after the effective date of this Order, Respondent Le shall pay a fine in the amount of Two Thousand and 00/100s Dollars (\$2,000.00) for the violations stated in Count One and Count Two of the Notice of Intended Action and Accusation filed in this case on April 21, 2023. Respondent Le shall pay this fine by *personal check, cashier's check, certified check, or money order* made payable to **"State of Nevada, Office of the Treasurer."** Respondent is directed to mail or deliver payment to the Board's Reno office, located at 985 Damonte Ranch Parkway – Suite 206, Reno, Nevada 89521.
- c) Within thirty (30) days after the effective date of this Order, Respondent Le shall partially reimburse the Board for its costs of investigation and prosecution in the amount of Three Hundred Fifty-Two and 20/100s Dollars (\$352.20). Respondent Le shall remit such reimbursement by *personal, cashiers, or certified check or money order* made payable to **"Nevada State Board of Pharmacy."** Respondent Le is directed to mail or deliver payment to the Board's Reno office, located at 985 Damonte Ranch Parkway, Suite 206, Reno, Nevada 89521.
- d) For a period of twelve (12) months after the effective date of this Order, Respondent Le shall refrain from committing any acts or omissions for which she may be disciplined

pursuant to NRS Chapters 639, 453, and 454, and/or the regulations promulgated thereunder.

Any failure by Respondent Le to comply with the terms and conditions of this Order may result in issuance by the Executive Secretary of an order to show cause pursuant to NAC 639.965 directing Respondent Le to appear before the Board at the next regularly scheduled meeting for a show cause hearing. If such a hearing results in a finding of a violation of this Order by Respondent Le, the Board may impose additional discipline upon Respondent Le not inconsistent with the provisions of NRS Chapter 453, 454, and/or NRS Chapter 639. Effective twelve (12) months after the effective date of this Order, and upon satisfactory completion and/or performance of the terms and conditions of this Order, Respondent Le's certificate of registration no. 18241 shall be automatically restored with all associated rights and privileges.

AS TO RESPONDENT PHAM:

Respondent Pham's certificate of registration no. 16235 is hereby REVOKED, provided that the execution of the foregoing revocation order shall be STAYED and Respondent Pham shall be permitted to engage in the practice of pharmacy in Nevada on the following conditions:

- a) Within twelve (12) months after the effective date of this Order, Respondent Pham shall obtain at least three (3) continuing education credits related to the practice of pharmacy with an emphasis on safe medication practices. Such credits are in addition to the credits that Respondent Pham must otherwise obtain pursuant to NAC 639.330.
- b) Within thirty (30) days after the effective date of this Order, Respondent Pham shall pay a fine in the amount of Seven Hundred Fifty and 00/100s Dollars (\$750.00) for the violation stated in Count Three of the Notice of Intended Action and Accusation filed in this case on April 21, 2023. Respondent Pham shall pay this fine by *personal check, cashier's check, certified check, or money order* made payable to "State of Nevada, Office of the Treasurer." Respondent Pham is directed to mail or deliver payment to the Board's Reno office, located at 985 Damonte Ranch Parkway – Suite 206, Reno, Nevada 89521.

- c) Within thirty (30) days after the effective date of this Order, Respondent Pham shall partially reimburse the Board for its costs of investigation and prosecution in the amount of Three Hundred Fifty-Two and 20/100s Dollars (\$352.20). Respondent Pham shall remit such reimbursement by *personal, cashiers, or certified check or money order* made payable to **“Nevada State Board of Pharmacy.”** Respondent Pham is directed to mail or deliver payment to the Board’s Reno office, located at 985 Damonte Ranch Parkway, Suite 206, Reno, Nevada 89521.
- d) For a period of twelve (12) months after the effective date of this Order, Respondent Pham shall refrain from committing any acts or omissions for which he may be disciplined pursuant to NRS Chapters 639, 453, and 454, and/or the regulations promulgated thereunder.

Any failure by Respondent Pham to comply with the terms and conditions of this Order may result in issuance by the Executive Secretary of an order to show cause pursuant to NAC 639.965 directing Respondent Pham to appear before the Board at the next regularly scheduled meeting for a show cause hearing. If such a hearing results in a finding of a violation of this Order by Respondent Pham, the Board may impose additional discipline upon Respondent Pham not inconsistent with the provisions of NRS Chapter 453, 454, and/or NRS Chapter 639. Effective twelve (12) months after the effective date of this Order, and upon satisfactory completion and/or performance of the terms and conditions of this Order, Respondent Pham’s certificate of registration no. 16235 shall be automatically restored with all associated rights and privileges.

AS TO RESPONDENT CVS:

Within thirty (30) days after the effective date of this Order, Respondent CVS shall pay a fine in the amount of Ten Thousand and 00/100s Dollars (\$10,000.00) for the violations stated in Count Four of the Notice of Intended Action and Accusation filed in this case on April 21, 2023. Respondent CVS shall pay this fine by *personal check, cashier’s check, certified check, or money order* made payable to **“State of Nevada, Office of the Treasurer.”** Respondent CVS is directed to mail or deliver

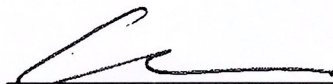
payment to the Board's Reno office, located at 985 Damonte Ranch Parkway – Suite 206, Reno, Nevada 89521.

Within thirty (30) days after the effective date of this Order, Respondent CVS shall partially reimburse the Board for its costs of investigation and prosecution in the amount of Three Hundred Fifty-Two and 20/100s Dollars (\$352.20). Respondent CVS shall remit such reimbursement by *personal, cashiers, or certified check or money order* made payable to “**Nevada State Board of Pharmacy.**” Respondent CVS is directed to mail or deliver payment to the Board's Reno office, located at 985 Damonte Ranch Parkway, Suite 206, Reno, Nevada 89521.

AS TO ALL RESPONDENTS:

This Order constitutes a final decision in a contested case and a public record pursuant to NRS 639.255(5) and shall be reported to the National Practitioner Data Bank pursuant to 42 U.S.C. § 1396r-2 and 45 CFR Part 60. This Order is and remains effective as of September 6, 2023.

IT IS SO ORDERED.



Helen Park, Pharm.D.
President
Nevada State Board of Pharmacy



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NEVADA STATE BOARD OF PHARMACY,

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SANDRA LE, RPH,
Certificate of Registration No. 18241,

KHANH V. PHAM, RPH,
Certificate of Registration No. 16235, and

CVS PHARMACY #8804,
Pharmacy License No. PH01093,

Respondents.

Case Nos. 19-131-RPH-A-S
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NOTICE OF INTENDED ACTION
AND ACCUSATION

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

JURISDICTION

1. The Nevada State Board of Pharmacy (Board) has personal jurisdiction over Respondent Sandra Le, RPH (“Respondent Le”), because Respondent Le holds a certificate of registration issued by the Board pursuant to NRS 639.127, authorizing her to engage in the practice of pharmacy within the state of Nevada.

2. The Board has personal jurisdiction over Respondent Khanh V. Pham, RPH (“Respondent Pham”), because Respondent Pham holds a certificate of registration issued by the Board pursuant to NRS 639.127, authorizing him to engage in the practice of pharmacy within the state of Nevada.

3. The Board has personal jurisdiction over Respondent CVS Pharmacy #8804 (“Respondent CVS Pharmacy”) because Respondent CVS Pharmacy holds a license issued by the

Board pursuant to NRS 639.230, authorizing Respondent CVS Pharmacy to operate a pharmacy located 1408 West Craig Road in North Las Vegas, Nevada.

4. The Board has jurisdiction over the subject matter of this accusation because, at the time of the violations alleged herein, Respondent Le and Respondent Pham were Nevada registered pharmacists engaged in the practice of pharmacy at a business location operated by Respondent CVS Pharmacy in North Las Vegas, Nevada.

FACTUAL ALLEGATIONS

5. On or about July 17, 2019, Respondent Le was a registered pharmacist on duty at the CVS Pharmacy #8804 in North Las Vegas, Nevada. While on duty, Respondent Le processed a prescription for patient TC. The prescription was for Endometrin, a medication containing progesterone. Patient TC's physician had written the prescription with instructions to fill a quantity of forty-two suppositories to be inserted vaginally by patient TC three times per day in connection with *in vitro* fertilization ("IVF"). Endometrin is used to increase the level of progesterone in patients undergoing fertility treatments.

6. On or about July 17, 2019, Respondent Le processed another prescription for patient TC in connection with her IVF. Patient TC's physician had written that prescription for a quantity of four 250mg tablets of Zithromax, an antibiotic. The Zithromax prescription was written with instructions for patient TC to take two tablets with dinner on the evening before the IVF procedure and two tablets with breakfast on the morning of the IVF procedure.

7. Pharmaceutical Technician Haydee Martinez (PT Martinez), the holder of license no. PT16676, performed the data entry for the prescription identified in paragraph 5 above. Pharmaceutical Technician Vanessa Cardozo (PT Cardozo), the holder of license no. PT07016, performed the data entry for the prescription identified in paragraph 6 above. Respondent Le performed the verifications for both prescriptions.

8. Regarding the prescription described in paragraph 5 above, PT Martinez mistakenly identified the medication as misoprostol, believing that misoprostol was the generic name for

Endometrin. PT Martinez entered instructions for patient TC to insert one misoprostol tablet vaginally three times per day as directed by her physician. When inserted vaginally, misoprostol is used to terminate a pregnancy, not to assist with fertility treatments.

9. Regarding the prescription described in paragraph 6 above, PT Cardozo correctly identified the medication and the prescribed dose, but she mistakenly entered the prescribed quantity as six 250 mg tablets. PT Cardozo also entered incorrect dosage instructions, advising patient TC to “take two tablets by mouth today, then take 1 tablet daily for 4 days.” This conflicted with the physician’s instructions to take two tablets with dinner on the evening before the IVF procedure and two tablets with breakfast on the morning of the IVF procedure.

10. Respondent Le verified each of the prescriptions identified in paragraphs 5 and 6 above. Respondent Le did not discover the data entry mistakes by PT Martinez or PT Cardozo. Notably, Respondent Le overrode a DUR system warning pertaining to the data entry error relating to misoprostol. The warning indicated that the stated dose was incorrect and that the medication was contraindicated for persons of child-bearing age. Despite the warning, Respondent verified the prescription as entered.

11. On or about July 20, 2019, Respondent Pham was the registered pharmacist on duty at CVS Pharmacy #8804, when patient TC arrived to pick up her prescription medications prior to her IVF procedure. Respondent Pham neglected to counsel patient TC before she left the pharmacy with an incorrect prescription for misoprostol. Had Respondent Pham properly counseled patient TC, the counseling would have alerted patient TC that she had been given the wrong medication.

12. On or about July 23, 2019, patient TC’s physician performed the scheduled IVF procedure, transferring two embryos into patient TC’s uterus. Thereafter, in accordance with the instructions that Respondent Le had incorrectly prepared for her, patient TC vaginally inserted the misoprostol that Respondent Le had incorrectly supplied to her. This caused patient TC to suffer from stomach cramps, which in turn prompted patient TC to search for relevant information on the internet.

When she discovered that misoprostol is used to terminate pregnancies, she filed a complaint with the Board.

13. Following receipt of patient TC's complaint, Investigator Dena McClish conducted an investigation. Respondent Le and Respondent CVS Pharmacy fully cooperated with the investigation, providing business records that confirm the allegations stated above. Respondent Pham had left the employ of CVS Pharmacy by the time of the investigation. It is unknown whether patient TC lost her embryos due to the errors and/or omissions described above.

APPLICABLE LAW

14. The Board may revoke or suspend the registration of any pharmacist who has been guilty of unprofessional conduct or conduct contrary to the public interest. *See* NRS 639.210(4). Likewise, the Board may revoke or suspend the registration of any pharmacist who has violated any provision of Nevada law relating to prescription drugs. *See* NRS 639.210(12). In lieu of revoking or suspending such a pharmacist's registration, the Board may impose fines as a disciplinary measure. *See* NRS 639.255; NAC 639.955.

15. A pharmacist's conduct is deemed unprofessional if the pharmacist fails to strictly follow the instructions of the person writing, making, or ordering a prescription as to its filling or refilling. *See* NAC 639.945(1)(i). Additionally, a pharmacist's conduct is deemed unprofessional if the pharmacist performs his or her duties in an incompetent, unskillful or negligent manner. *See* NAC 639.945(1)(i). Finally, a pharmacist's conduct is deemed unprofessional if the pharmacist fails to confer with the person writing, making or ordering a prescription if there is an error or omission in it which should be questioned. *See* NAC 639.945(1)(e).

16. Unless otherwise provided by law, a pharmacist must verbally provide a patient or a person caring for the patient with information about each prescription drug or device dispensed to the patient. Failure to provide appropriate counseling to the patient constitutes a violation of NRS 639.707(1). Pursuant to NRS 639.210(12), the Board may discipline a pharmacist who violates NRS 639.707(1).

17. Each pharmacy in Nevada must be managed by a registered pharmacist, approved by the Board, who is responsible for compliance by the pharmacy and its personnel with all state and federal laws and regulations relating to the operation of the pharmacy and the practice of pharmacy. *See* NRS 639.220(1). Pursuant to NRS 639.230(5), NAC 639.702 and NAC 639.945(2), pharmacies, pharmacy managers, and/or pharmacists are responsible for the acts and omissions of the pharmacy employees under their supervision.

COUNT ONE

Unprofessional Conduct by a Pharmacist (Respondent Le)

18. On or about July 17, 2019, Respondent Le engaged in unprofessional conduct as described above. Respondent's Le's conduct was unprofessional because: she failed to strictly follow the instructions of patient TC's physician as to the filling of patient TC's prescriptions for Endometrin and Zithromax; she failed to properly verify the data that the pharmacy technician had entered in the pharmacy management system regarding patient TC's prescriptions for Endometrin and Zithromax; and/or she failed to confer with patient TC's physician concerning errors that should have been readily apparent to her after seeing the system warning as described in paragraph 10 above. Any of these mistakes amounts to unprofessional conduct for which the Board may impose discipline pursuant to NRS 639.210(4), NRS 639.255(1), NAC 639.945, and NAC 639.955.

COUNT TWO

Supervisory Liability (Respondent Le)

19. On or about July 17, 2019, Respondent Le failed to adequately supervise PT Martinez and PT Cardozo, the pharmaceutical technicians who made the data entry mistakes as described above. These technicians were under Respondent Le's supervision at the time. Pursuant to NAC 639.702, the data entry errors and/or omissions may be attributed to Respondent Le. Accordingly, the Board may discipline Respondent Le pursuant to NRS 639.210(4), NRS 639.255(1), NRS 639.945(1), and NAC 639.955.

COUNT THREE

Violation of NRS 639.707(1) (Respondent Pham)

20. On or about July 20, 2019, Respondent Pham was the pharmacist on duty responsible for counseling patient TC when she arrived at CVS Pharmacy to pick up her prescriptions. By neglecting to counsel patient TC before she left the pharmacy with an incorrect prescription for misoprostol, Respondent Pham violated the provisions NRS 639.707(1). Had Respondent Pham properly counseled patient TC, the counseling would have alerted patient TC that she had been given the wrong medication. Accordingly, the Board may discipline Respondent Pham pursuant to NRS 639.210(12), NRS 639.255(1), and NAC 639.955.

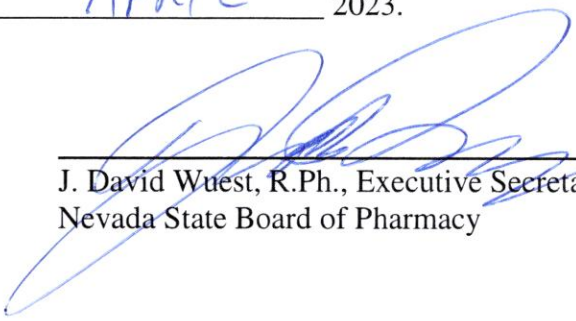
COUNT FOUR

Vicarious Liability (Respondent CVS Pharmacy)

21. Between July 17 and 20, 2019, Respondent CVS Pharmacy employed Respondent Le and Respondent Pham as staff pharmacists. Pursuant to NRS 639.230(5), NAC 639.702, and NAC 639.945(2), Respondent CVS Pharmacy is liable for their unprofessional conduct and/or statutory violations as described above. Accordingly, the Board may discipline CVS Pharmacy pursuant to NRS 639.210, NRS 639.255, and NAC 639.955.

WHEREFORE it is requested that the Nevada State Board of Pharmacy take appropriate disciplinary action with respect to the certificate of registrations of Respondent Le and Respondent Pham, and the pharmacy license of Respondent CVS Pharmacy.

DATED this 21st day of APRIL 2023.



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