

BEFORE THE NEVADA STATE BOARD OF PHARMACY

NEVADA STATE BOARD OF PHARMACY,

v.

Petitioner,

NOTICE OF INTENDED ACTION
AND ACCUSATION

PRESCRIPTIONONLINE.COM,
Certificate of Registration #PH01379,

Case No. 01-105-PH-S

JOSEPH PETER AURALLE, R.Ph.,
Certificate of Registration #6158,

Case No. 01-105A-RPH-S

JULIE JEAN LEVITT, R.Ph.,
Certificate of Registration #13427,

Case No. 01-105B-RPH-S

Respondents.

COMES NOW Keith W. Macdonald, in his official capacity as Executive Secretary of the Nevada State Board of Pharmacy, and 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.

I.

The Nevada State Board of Pharmacy has jurisdiction over this matter because Respondent Prescriptiononline.com is a pharmacy licensed by the Board, Respondent Joseph Peter Auralle is a pharmacist licensed by the Board, and Respondent Julie Jean Levitt is a pharmacist licensed by the Board.

II.

On April 7, 1999, Prescriptiononline.com applied for a license as a pharmacy. The application showed that Prescriptiononline.com was owned by

Prescriptiononline.com, Inc., and that the 100% shareholder/owner of Prescriptiononline.com, Inc. was Terrie Suarez. Ms. Suarez was also shown to be the sole director of the corporation and the President, Secretary, and Treasurer of the corporation.

III.

On August 17, 2000, the Louisiana Board of Pharmacy issued a Final Order against Pharmaceuticals Southwest, Inc., a Louisiana-licensed institutional pharmacy. The managing officer of Pharmaceuticals Southwest, Inc. was Ms. Suarez. In the Final Order, the Louisiana Board of Pharmacy found that Ms. Suarez had committed a "blatant denial of receipt" of \$1.2 million in drugs from Bindley Western Drug Co. even when confronted with actual copies of sales manifests signed by her to Bindley Western Drug Co. The Board also found violations of 19 different categories of record keeping or operational statutes and regulations. Based upon the receipt of \$1.2 million in drugs and "the complete disregard for pharmacy laws and regulations pertaining thereto, coupled with Ms. Suarez's blatant denial of receipt of the drugs," the Board revoked Pharmaceuticals Southwest, Inc.'s license and fined it \$100,000.

IV.

In September 2000, Prescriptiononline.com was sold by Ms. Suarez to Melissa Cosenza for \$50,000. According to the Stockholder Ledger for Prescriptiononline.com, 100% of the stock for the corporation was transferred from Ms. Suarez to Ms. Cosenza on October 1, 2000.

On March 26, 2001, Ms. Cosenza signed a Nevada application for change of ownership form. The form was not sent to the Board's office until March 27, 2001 and was not received by the Board office until April 2, 2001.

VI.

On March 27, 2001, the Board's staff filed a Notice of Intended Action and Accusation (Case #01-012-PH-S) against Prescriptiononline.com based upon Prescriptiononline.com's providing false answers to the Board on Prescriptiononline.com's renewal application and resulting from the owner's (Ms. Suarez) receiving discipline in another state on grounds that would constitute unprofessional conduct in Nevada.

VII.

On February 2, 2001, Halima Sebuliba, R.Ph. began working as a pharmacist at Prescriptiononline.com. On April 27, 2001, Halima Sebuliba, R.Ph. became the managing pharmacist for Prescriptiononline.com.

VIII.

On May 22, 2001, the National Association of Boards of Pharmacy (NABP) temporarily suspended the certification of Prescriptiononline.com as a Verified Internet Pharmacy Practice Site (VIPPS). As of the date of this Accusation, Prescriptiononline.com's VIPPS certification remains suspended.

IX.

On May 25, 2001, the Board entered Findings of Fact, Conclusions of Law, and Order against Prescriptiononline.com in Case #01-012-PH-S. The Board found that Prescriptiononline.com had committed the violations alleged in the two causes of action.

The Board ordered Prescriptiononline.com to be audited and to pay the Board's fees and costs of \$509.74. Prescriptiononline.com complied with the terms of the Order.

X.

The prescription filling practices of Prescriptiononline.com changed radically in July 2001. Prior to July 2001, Prescriptiononline.com filled no more than thirteen prescriptions for controlled substances. Starting in July 2001, Prescriptiononline.com filled large numbers of controlled substances prescriptions as the following table details.

MONTH & YEAR	# OF CS Rxs	# OF DOSAGE UNITS
January 2001	1	120
February 2001	2	90
March 2001	0	0
April 2001	0	0
May 2001	1	54
June 2001	13	1,118
July 2001	1,105	106,609
August 2001	2,072	201,439
September 2001	2,220	208,311
October 2001	4,803	388,024
November 2001	4,135	372,878
December 2001	4,164	400,078
January 2002	6,594	633,781
February 2002	5,940	574,758
March 2002	5,897	576,532
April 2002	4,681	456,853
May 2002	2,371	227,039
June 2002	1,223	113,398
July 2002	893	84,519
August 2002	1,253	114,762
September 2002	1,834	164,679
October 2002	2,726	243,172
TOTALS	51,928	4,868,214

XI.

On October 2, 2001, Julie Levitt began working at Prescriptiononline.com as a pharmacist.

XII.

On January 15, 2002, Joseph Auralle took over as the managing pharmacist for Prescriptiononline.com when Ms. Sebuliba's employment was terminated.

XIII.

On March 6, 2002, the Drug Enforcement Agency (DEA) executed a search warrant at Prescriptiononline.com. Board staff has been informed that the DEA removed many records from Prescriptiononline.com.

XIV.

On March 8, 2002, counsel for Prescriptiononline.com spoke with the Board's General Counsel regarding the operations of Prescriptiononline.com and the Nevada laws related to the filling of controlled substances prescriptions written by physicians who are not licensed in Nevada.

XV.

On March 11, 2002, the Board's General Counsel provided a letter to counsel for Prescriptiononline.com confirming the March 8 telephone call and explaining the applicable statute and regulation.

XVI.

On March 15, 2002, counsel for Prescriptiononline.com sent a letter to the Board's General Counsel in response to the March 11 letter. In his March 15 letter, counsel for Prescriptiononline.com claimed that Prescriptiononline.com's operations complied with Nevada law.

XVII.

On April 2, 2002, the Board's General Counsel sent a second letter to counsel for Prescriptiononline.com. In this letter, the Board's General Counsel explained that he disagreed with counsel for Prescriptiononline.com regarding the proper interpretation of Nevada law as it related to Prescriptiononline.com's practices. In particular, the Board's General Counsel warned that Nevada law requires that a pharmacist verify a *bona fide* patient-physician relationship for every prescription written by a physician not licensed in Nevada and that such verification must be recorded in the prescription records.

XVIII.

The large increase in controlled substances prescriptions filled by Prescriptiononline.com was because Prescriptiononline.com began accepting prescriptions from individual physicians or groups of physicians who were affiliated with certain websites. Though the websites and the physicians involved changed throughout the period of July 2001 through the date of the filing of this Accusation, the *modus operandi* was essentially the same. A patient would: (1) contact Prescriptiononline.com or one of the physicians' websites; (2) fill out a questionnaire (usually online, but sometimes sent via facsimile machine); (3) transmit the questionnaire and payment data; (4) receive an "appointment" for a telephone call with the physician; (5) speak by telephone with the physician at the appointed time; and (6) inform the physician of the controlled substances and dangerous drugs desired. The physician would write one or more prescriptions, almost always including at least one controlled substances prescription, based solely upon the telephone call and the patient's online questionnaire without ever physically seeing or examining the patient. The physician would transmit by facsimile the prescriptions written for a patient to

Prescriptiononline.com that would then fill the prescription and send the filled prescriptions to the patient's home.

XIX.

Using the scheme set out in averment XVIII, Prescriptiononline.com processed and dispensed controlled substances as detailed by physician in the following tables:

ALLEN BROWNE, M.D. Licensed in Arizona 10/7/2001 - 1/15/2002		
Ingredient (by NDC #)	# Rx's	# of Dosage Units
ALPRAZOLAM	26	1,725
APAP/CODEINE	2	150
APAP/HYDROCODONE	139	11,115
HYDROCODONE/IBUPROFEN	2	180
DIAZEPAM	22	990
TRIAZOLAM	2	120
ZOLPIDEM TARTRATE	1	30
TOTALS	194	14,310

WILLIAM DALE, M.D. Licensed in California 6/29/01-10/10/2002 NOTE: deceased 5/11/02		
Ingredient (by NDC #)	# Rx's	# of Dosage Units
ALPRAZOLAM	2,425	215,285
APAP/BUTAL/CAFF/CODEINE	16	1210
APAP/BUTALBITAL/CAFFEINE/COD	37	3180
ASA/BUTAL/CAFF	60	5,990
ASA/BUTAL/CAFF/CODEINE	136	13,420
APAP/CODEINE	197	20,260
APAP/HYDROCODONE	13,451	1,395,016
HYDROCODONE/TBUPROFEN	89	8,710
APAP/PROPOXYPHENE NAP	51	5,060
PROPOXYPHENE HYDROCHLORIDE	35	3,500
PROPOXYPHENE NAPSYLATE	12	1200
BENZPHETAMINE	20	1,140
CLONAZEPAM	24	1,790
DIAZEPAM	2,343	171,970
DIETHYLPROPION	14	480
FLURAZEPAM HYDROCHLORIDE	5	150
LORAZEPAM	80	6,690
MEPROBAMATE	3	300
NALOXONE/PENTAZOCINE	7	840
PHENDIMETRAZINE TARTRATE	5	330
PHENTERMINE HYDROCHLORIDE	137	4,440
TEMAZEPAM	7	210
TRIAZOLAM	22	660
Unknown NDC	1	30
ZALEPLON	6	360
ZOLPIDEM TARTRATE	129	3,855
CPM POL/HYDROCODONE POL	6	2,880
CPM/HYDROCODONE/PHENYLEPH	3	1,419
BUTORPHANOL TARTRATE	33	101
TOTALS (solid dosage units only)	19,312	1,866,076

J. CASEY ELGIN, M.D. Licensed in Colorado 10/4/01-3/25/02 Note: revised 8/03		
Ingredient (by NDC #)	# Rx's	# of Dosage Units
ALPRAZOLAM	335	25,890
APAP/BUTALBITAL/CAFFEINE/COD	3	270
ASA/BUTAL/CAFF	4	360
ASA/BUTAL/CAFF/CODEINE	11	900
APAP/CODEINE	20	1,770
HYDROCODONE/IBUPROFEN	18	1,620
APAP/HYDROCODONE	1,709	152,700
APAP/PROPOXYPHENE NAP	12	960
BENZPHETAMINE	3	210
BUTORPHANOL TARTRATE	2	2
CLONAZEPAM	5	300
CLORAZEPATE DIPOTASSIUM	3	270
DIAZEPAM	229	15,060
FLURAZEPAM HYDROCHLORIDE	2	60
LORAZEPAM	18	1,170
PHENDIMETRAZINE TARTRATE	1	30
PHENTERMINE HYDROCHLORIDE	18	600
TEMAZEPAM	18	750
TRIAZOLAM	2	60
ZOLPIDEM TARTRATE	18	600

CPM POL/HYDROCODONE POL	6	1,740
-------------------------	---	-------

TOTALS (solid dosage units only)	2,431	203,582

STEPHEN J. GRAHAM, M.D. Licensed in Idaho 9/28/01-3/22/02		
Ingredient (by NDC #)	# Rx's	# of Dosage Units
ALPRAZOLAM	230	13,020
APAP/BUTAL/CAFF/CODEINE	1	60
APAP/BUTALBITAL/CAFFEINE/CO	2	120
ASA/BUTAL/CAFF	4	180
ASA/BUTAL/CAFF/CODEINE	18	930
APAP/CODEINE	16	990
APAP/HYDROCODONE	2,035	134,745
HYDROCODONE/BUPROFEN	40	2,430
HYDROCODONE/PPA	1	480
APAP/PROPOXYPHENE NAP	17	990
BENZPHETAMINE	3	180
CLONAZEPAM	20	1,350
CLORAZEPATE DIPOTASSIUM	1	60
DIAZEPAM	164	9,090
ELURAZEPAM HYDROCHLORIDE	2	60
LORAZEPAM	16	900
NALOXONE/PENTAZOCINE	1	60
OXAZEPAM	2	120
PEMOLINE	2	60
PHENTERMINE HYDROCHLORIDE	20	850
SIBUTRAMINE HYDROCHLORIDE	4	151
TEMAZEPAM	9	270
TRIAZOLAM	1	90
ZOLPIDEM TARTRATE	43	1,341

CPM POL/HYDROCODONE POL	4	1920
HOMATROP MBR/HYDROCODONE	2	960
GG/HYDROCODONE	1	480
BUTORPHANOL TARTRATE	10	10

TOTALS (solid dosage units only)	2,652	168,527
----------------------------------	-------	---------

WILLIAM L. HEROLD, M.D. Licensed in Alaska 10/6/01-12/15/01		
Ingredient (by NDC #)	# Rx's	# of Dosage Units
ALPRAZOLAM	2	60
APAP/HYDROCODONE	312	22620
ASA/BUTAL/CAFF/CODEINE	3	150
PHENTERMINE HYDROCHLORIDE	3	90
TESTOSTERONE	1	10
ZOLPIDEM TARTRATE	3	60
TOTAL	324	22,900

JUAN A. IBANEZ, M.D. Licensed in Florida 4/30/02-10/31/02		
Ingredient (by NDC #)	# Rxs	# of Dosage Units
ALPRAZOLAM	214	16,823
APAP/BUTAL/CAFF/CODEINE	3	90
ASA/BUTAL/CAFF	2	180
ASA/BUTAL/CAFF/CODEINE	17	1,470
APAP/CODEINE	14	1,260
APAP/HYDROCODONE	2,191	194,731
HYDROCODONE/IBUPROFEN	44	3,780
APAP/PROPOXYPHENE NAP	4	360
PROPOXYPHENE	3	270
BENZPHETAMINE	1	60
CHLORDIAZEPOXIDE	2	120
CLONAZEPAM	5	420
DIAZEPAM	120	8,810
LORAZEPAM	15	1,170
UNKNOWN NDC	5	1,484
ZALEPLON	2	60
ZOLPIDEM TAKTRATE	23	690
CPM POL/HYDROCODONE POL	1	480
TOTALS (solid dosage units only)	2,665	231,778

RICHARD J. KIENZLE, M.D. Licensed in Tennessee 1/3/02-10/31/02		
Ingredient (by NDC #)	# Rxs	# of Dosage Units
ALPRAZOLAM	31	1,995
APAP/BUTALBITAL/CAFFEINE/CODEI	2	180
APAP/CODEINE	5	450
APAP/HYDROCODONE	340	29,984
HYDROCODONE/IBUPROFEN	10	900
APAP/PROPOXYPHENE NAP	4	360
CLONAZEPAM	2	180
DIAZEPAM	18	1,110
LORAZEPAM	2	120
PHENTERMINE HYDROCHLORIDE	3	150
TEMAZEPAM	3	90
ZOLPIDEM TAKTRATE	1	30
TOTALS	421	35,549

SANJAY SOOD, M.D. Licensed in California 3/28/02-10/24/02		
Ingredient (by NDC #)	# Rx's	# of Dosage Units
ALPRAZOLAM	224	18,755
APAP/BUTALBITAL/CAFFEINE/CODEINE	3	30
ASA/BUTAL/CAFF	8	795
ASA/BUTAL/CAFF/CODEINE	19	1,710
APAP/CODEINE	11	1,320
APAP/DICHLORAL/SOMETHEPTENE	11	550
APAP/HYDROCODONE	941	96,795
HYDROCODONE/IBUPROFEN	6	585
APAP/PROPOXYPHENE NAP	1	120
PROPOXYPHENE HYDROCHLORIDE	3	360
DIAZEPAM	17	825
LORAZEPAM	20	1,260
PHENTERMINE HYDROCHLORIDE	7	270
TEMAZEPAM	6	150
ZOLPIDEM TARTRATE	26	825
BUTORPHANOL TARTRATE	3	3
TOTALS (solid dosage units only)	1,303	124,350

WAYNE DION STARKS, M.D. Licensed in Michigan 6/24/02-10/31/02		
Ingredient (by NDC #)	# Rx's	# of Dosage Units
ALPRAZOLAM	178	11,300
APAP/BUTALBITAL/CAFFEINE/CODEINE	16	1,700
ASA/BUTAL/CAFF/CODEINE	4	420
APAP/CODEINE	13	1,410
APAP/HYDROCODONE	1,146	130,520
HYDROCODONE/IBUPROFEN	6	660
CHLORAL HYDRATE	2	60
DIAZEPAM	213	12,070
LORAZEPAM	18	1,110
NALOXONE/PENTAZOCINE	3	450
OXAZEPAM	4	120
PHENTERMINE HYDROCHLORIDE	5	150
UNKNOWN NDC	1	30
ZOLPIDEM TARTRATE	21	690
CPM POL/HYDROCODONE POL	2	600
BUTORPHANOL TARTRATE	4	12
TOTALS (solid dosage units only)	1,630	160,690

ELSWORTH WILLIAMS, M.D. Licensed in California 5/28/02-9/23/02		
Ingredient (by NDC #)	# Rx's	# of Dosage Units
ALPRAZOLAM	16	1,050
APAP/CODEINE	3	270
APAP/HYDROCODONE	236	19,460
HYDROCODONE/IBUPROFEN	1	90
APAP/PROPOXYPHENE NAP	5	390
ASA/BUTAL/CAFF/CODEINE	2	180
CLONAZEPAM	3	180
DIAZEPAM	11	510
FLURAZEPAM HYDROCHLORIDE	2	60
LORAZEPAM	5	300
OXAZEPAM	3	270
PHENTERMINE HYDROCHLORIDE	1	1
SIBUTRAMINE HYDROCHLORIDE	3	90
ZOLPIDEM TARTRATE	11	330
TOTALS	302	23,181

DALE ZIMMERMAN, D.O. Licensed in New Mexico 10/8/0106/24/02		
Ingredient (by NDC #)	# Rx's	# of Dosage Units

ALPRAZOLAM	279	19,455
APAP/BUTAL/CAFF/CODEINE	3	300
ASA/BUTAL/CAFF	3	240
ASA/BUTAL/CAFF/CODEINE	12	1,170
APAP/CODEINE	14	1,260
APAP/HYDROCODONE	1,313	127,470
HYDROCODONE/IBUPROFEN	18	1,670
ASA/CAFF/PROPOXYPHENE	3	300
APAP/PROPOXYPHENE NAP	15	1,210
PROPOXYPHENE HYDROCHLORIDE	1	90
BENZPHETAMINE	3	180
CLONAZEPAM	9	720
DIAZEPAM	186	10,760
FLURAZEPAM HYDROCHLORIDE	1	30
LORAZEPAM	6	150
MEPROBAMATE	1	100
PHTERMINE HYDROCHLORIDE	10	300
TRIAZOLAM	5	150
ZOLPIDEM TARTRATE	17	480
CPM/HYDROCODONE/PHENYLEPH	1	473
CPM POL/HYDROCODONE POL	2	720
TOTALS (solid dosage units only)	1,809	166,035

FIRST CAUSE OF ACTION

XX.

All of the prescriptions filled by Prescriptiononline.com from March 6, 2002 through September 20, 2002, totaling 17,988 prescriptions, were analyzed. Of these prescriptions, 16,136 were for controlled substances (90%) and 1,852 were for dangerous drugs (10%). All of the 17,988 prescriptions analyzed were written by physicians who were not licensed in Nevada.

XXI.

The records of Prescriptiononline.com show that no pharmacist or other pharmacy personnel at Prescriptiononline.com, including Mr. Auralle and Ms. Levitt, ever contacted any of the patients or physicians to verify whether a *bona fide*

relationship existed between any of the patients and the physicians involved for any of the 20,878 controlled substances prescriptions analyzed.

XXII.

In failing to verify whether a controlled substances prescription from a physician not licensed in Nevada was the result of a *bona fide* patient-physician relationship, Mr. Auralle and Ms. Levitt violated Nevada Revised Statutes (NRS) 639.210(4), (11), and (12) and 639.235(2)(b), Nevada Administrative Code (NAC) 639.945(1)(i), and 21 C.F.R. §1306.04(a). Each of the 16,136 controlled substances prescriptions for which a verification had not been performed constitutes a separate count for disciplinary purposes under NRS 639.255(1)(f), and a separate fine or other discipline may be imposed for each such prescription.

SECOND CAUSE OF ACTION

XXIII.

In failing to verify whether a controlled substances prescription from a physician not licensed in Nevada was the result of a *bona fide* patient-physician relationship, Prescriptiononline.com violated NRS 639.210(4), (11), and (12) and 639.235(2)(b), NAC 639.945(1)(i) and (2), and 21 C.F.R. §1306.04(a). Each of the 16,136 controlled substances prescriptions for which a verification had not been performed constitutes a separate count for disciplinary purposes under NRS 639.255(1)(f), and a separate fine or other discipline may be imposed for each such prescription.

THIRD CAUSE OF ACTION

XXIV.

The records of Prescriptiononline.com show that no pharmacist, including Mr. Auralle and Ms. Levitt, ever contacted any of the patients or physicians to verify

whether a *bona fide* relationship existed between any of the patients and the physicians involved for any of the 1,852 dangerous drug prescriptions in which the physician and the patient were resident in different states.

XXV.

In failing to verify whether a dangerous drug prescription from a physician not licensed in Nevada and not practicing in the state in which a patient was located was the result of a *bona fide* patient-physician relationship, Mr. Auralle and Ms. Levitt violated NRS 639.210(4) and (12) and NAC 639.752 and 639.945(1)(i). Each of the 1,852 dangerous drug prescriptions for which a verification had not been performed constitutes a separate count for disciplinary purposes under NRS 639.255(1)(f), and a separate fine or other discipline may be imposed for each such prescription.

FOURTH CAUSE OF ACTION

XXVI.

In failing to verify whether a dangerous drug prescription from a physician not licensed in Nevada and not practicing in the state in which a patient was located was the result of a *bona fide* patient-physician relationship, Prescriptiononline.com violated NRS 639.210(4) and (12) and NAC 639.752 and 639.945(1)(i) and (2). Each of the 1,852 dangerous drug prescriptions for which a verification had not been performed constitutes a separate count for disciplinary purposes under NRS 639.255(1)(f), and a separate fine or other discipline may be imposed for each such prescription.

FIFTH CAUSE OF ACTION

XXVII.

On May 14, 2002, Dr. William Dale died. Nonetheless, Mr. Auralle, Ms. Levitt, and Prescriptiononline.com filled or refilled 1,668 controlled substances prescriptions

written by Dr. Dale. Of these, 73 were new prescriptions and 1,595 were refills of earlier prescriptions.

XXVIII.

In filling or refilling 1,668 prescriptions for controlled substances written or allegedly written by Dr. Dale after he was deceased, Mr. Auralle and Ms. Levitt violated NRS 453.377(1), 453.381(4), 639.210(4), (11), and (12), NAC 453.280(3) and 639.945(1)(e), (g), and (i), and 21 CFR §1301.52(a). Each of the 1,668 controlled substances prescriptions, whether new or refill, constitutes a separate count for disciplinary purposes under NRS 639.255(1)(f), and a separate fine or other discipline may be imposed for each such prescription, whether new or refill.

SIXTH CAUSE OF ACTION

XXIX.

In filling or refilling 1,668 prescriptions for controlled substances written or allegedly written by Dr. Dale after he was deceased, Prescriptiononline.com violated NRS 453.377(1), 453.381(4), 639.210(4), (11), and (12) and NAC 453.280(3), 639.945(1)(e), (g), and (i) and (2), and 21 CFR §1301.52(a). Each of the 1,668 controlled substances prescriptions, whether new or refill, constitutes a separate count for disciplinary purposes under NRS 639.255(1)(f), and a separate fine or other discipline may be imposed for each such prescription, whether new or refill.

SEVENTH CAUSE OF ACTION

XXX.

On December 4, 2001, an Administrative Law Judge Stephen E. Hielt entered an Interim Suspension Order against Dr. Jon Opsahl. The essence of the Interim Suspension Order was that Dr. Opsahl was prescribing Cipro over the Internet "without

a good faith prior examination of the patients." The December 4, 2001 Interim

Suspension Order provided:

... Respondent is further prohibited from prescribing, dispensing, or furnishing dangerous drugs as defined in Business and Professions Code section 2411 without a good faith prior examination and medical indication therefore. Respondent is further prohibited from prescribing, dispensing, or furnishing, or causing to be prescribed, dispensed, or furnished, dangerous drugs or dangerous devices, as defined in Business and Professions Code section 4022, on the Internet for delivery to any person in this state, without a good faith prior examination and medical indication therefor.

XXXI.

On May 1, 2002, Judge Hjelt suspended Dr. Opsahl's medical license pending further subsequent argument. The May 1, 2002 suspension was based upon Dr. Opsahl's continual violations the terms of the December 4, 2001 Interim Suspension Order. The violations of the December 4, 2001 Interim Suspension Order included the thousands of controlled substances and dangerous drug prescriptions he wrote for patients from all over the United States, which prescriptions were filled at Prescriptiononline.com.

XXXII.

On May 6, 2002, the Board sent a fax broadcast to all Nevada pharmacies, including Prescriptiononline.com, that stated as follows:

Investigative information informs us that Dr. John Opsahl has been suspended by the California State Board of Medical Examiners. Do **not** fill any prescriptions, controlled substance or dangerous drugs. Remove his name from your computers.

If prescriptions continue to be filled after May 6th, the dispensing pharmacists may be held accountable.

If you [have] any questions, please contact us.

XXXIII.

On May 31, 2002, Judge Hjelt issued a Decision as a result of the earlier hearings and argument. Two of Judge Hjelt's factual findings are pertinent to this matter:

13. Respondent had a good faith, albeit unreasonable belief that, because he had a phone consultation and kept records, he was conducting a good faith examination and that he was not prescribing over the Internet. The most disturbing part of this is his failure to understand what constitutes a good faith medical examination. There is no question that on some rare occasions in fairly circumscribed situations a physician can prescribe medication without actually seeing a patient. However, respondent somehow made the exception into the rule. He treated hundreds if not thousands of patients for serious medical conditions and prescribed dangerous drugs without ever seeing them. In fact, almost all of them were out-of-state, spread throughout the United States.

14. Respondent had no way to adequately assess these patients. Observation is a necessary component of any physical examination. Despite the diagnostic aids that physicians have today in terms of tests and technology, the ability to see and examine remains crucial to effective diagnosis and treatment. ***Respondent's belief that talking over the phone with patients satisfied the requirement of a good faith examination is profoundly disturbing and demonstrates a combination of incredible arrogance and a woeful lack of judgment.*** (Emphasis supplied.)

Based upon these and other similar findings of fact, Judge Hjelt ordered that Dr. Opsahl's license to practice medicine was suspended until a full hearing of the matter was held in June 2002. The final decision as to whether Dr. Opsahl's license will be further suspended or revoked has not yet been issued.

XXXIV.

Prescriptiononline.com was the pharmacy to which Dr. Opsahl's unlawful prescriptions were sent. Prescriptiononline.com, Mr. Auralle, and Ms. Levitt filled or refilled 12,854 controlled substances prescriptions written by Dr. Opsahl after December 4, 2001. Of those 12,854 controlled substances prescriptions written after December 4, 2001, 293 of them were filled or refilled after Dr. Opsahl's prescribing privileges were suspended on May 1, 2002, including 96 filled or refilled after the Board's May 6, 2002 fax broadcast. The last prescription filled for a patient of Dr. Opsahl filled by Prescriptiononline.com was filled on July 3, 2002.

XXXV.

In filling or refilling as many as 12,854 prescriptions for controlled substances written by Dr. Opsahl after his prescribing privileges were conditioned or suspended, Mr. Auralle and Ms. Levitt violated NRS 453.377(1), 453.381(4), 639.210(4), (11), and (12) and NAC 453.280(3), 639.945(1)(e), (g), and (i), and 21 CFR §1301.52(a). Each of the 12,854 controlled substances prescriptions, whether new or refill, constitutes a separate count for disciplinary purposes under NRS 639.255(1)(f), and a separate fine or other discipline may be imposed for each such prescription, whether new or refill.

EIGHTH CAUSE OF ACTION

XXXVI.

In filling or refilling as many as 12,854 prescriptions for controlled substances written by Dr. Opsahl after his prescribing privileges were conditioned or suspended, Prescriptiononline.com violated NRS 453.377(1), 453.381(4), 639.210(4), (11), and (12) and NAC 453.280(3) and 639.945(1)(e), (g), and (i) and (2). Each of the 12,854 controlled substances prescriptions, whether new or refill, constitutes a separate count for disciplinary purposes under NRS 639.255(1)(f), and a separate fine or other discipline may be imposed for each such prescription, whether new or refill.

NINTH CAUSE OF ACTION

XXXVII.

The prescription records produced to the Board's staff showed significant numbers of prescriptions that were missing from the prescription records. Two randomly selected packs of fifty prescriptions showed the following:

##124800-124849	124802, 124803, 124812, 124813, 124816, 124817, 124818, 124819, 124826, 124827, 124833, 124834, 124844, 124845, 124846, 124848, 124849
##125350-125399	125350, 125363, 125364, 125365, 125367

XXXVIII.

In addition to the 22 prescriptions missing from the two prescription packs analyzed, no prescription was found for Rx #124814. Instead, a copy of Rx#124747 was found in the file with a handwritten notation saying "See RX 124814." No computer-generated label was found on this document for Rx #124814.

IXL.

In addition to the 22 prescriptions missing from the two prescription packs analyzed, the prescription pack numbered ## 125350-125399 contained the following prescriptions: Rx ## 125306, 125317, 125339, 125340. The first prescription in the pack that actually belonged in the pack (Rx #125351) and all subsequent prescriptions in the pack were dated as filled on August 15, 2002. Rx #125306 was dated as filled on August 14, 2002. Rx ## 125317, 125339, and 125340 were dated as filled on August 16, 2002, *after* the dates of the later-numbers prescriptions in the pack.

XL.

In failing to maintain the prescription records so that each prescription can be located and examined, Mr. Auralle violated NRS 639.210(4) and (15) and NRS 639.236(1) and NAC 639.706 and 639.945(1)(i) and (m).

TENTH CAUSE OF ACTION

XLI.

In failing to maintain the prescription records so that each prescription can be located and examined, Prescriptiononline.com violated NRS 639.210(4) and NRS 639.236(1) and NAC 639.706 and 639.945(1)(i) and (m) and (2).

ELEVENTH CAUSE OF ACTION

XLII.

Prescriptiononline.com stores its computerized records off-site at an unknown

location. The computers at Prescriptiononline.com do not store the prescription

records. Instead, access to the computer records is gained only through the Internet at

the off-site computerized storage.

XLIII.

Prescriptiononline.com does not have DEA approval for centralized, off-site

storage of its computerized records.

XLIV.

In maintaining its computerized prescription records off-site in a manner lacking

DEA approval, Prescriptiononline.com violated NRS 639.210(4) and (12) and 21 C.F.R.

§ 1304.04(a) and (b).

TWELFTH CAUSE OF ACTION

XLV.

An analysis of Prescriptiononline.com's prescriptions filled from March through

October 2002 showed that Prescriptiononline.com routinely added refills to controlled

substances prescriptions that were not authorized by the prescribing physician. The

following table shows the results of the analysis regarding unauthorized refills:

Rx #	Doctor	# Refills on Rx	# of Times Refilled	Drug	Qty
120718		2	3	Alprazolam 1 mg.	60
120908		2	3	Hydrocodone/APAP 10/500	60

121458	Opsahl	2	3	Hydrocodone/APAP 7.5/500	120
121506	Dale	2	3	Hydrocodone/APAP 10/500	100
121712	Dale	2	3	Alprazolam 1 mg.	120
122339	Dale	2	3	Adipex-P 37.5 mg.	30
122349	Dale	2	3	Fiorinal/Codeine No. 3	60
122362	Dale	2	3	Alprazolam 1 mg.	90
122815	Dale	2	3	Hydrocodone/APAP 10/650	120
123303	Dale	2	3	Alprazolam 1 mg.	30
123316	Dale	2	3	Alprazolam 1 mg.	90
123341	Dale	2	3	Alprazolam 1 mg.	100
123681	Dale	1	3	Hydrocodone/APAP 10/500	120 (total 240)
124473	Sood	2	3	Alprazolam 1 mg.	120
124631	Sood	2	3	Hydrocodone/APAP 10/500	120
124666	Sood	2	3	Hydrocodone/APAP 10/325	100
124695	Sood	2	3	Hydrocodone/APAP 10/325	120
124716	Sood	2	3	Hydrocodone/APAP 10/325	75
124717	Sood	2	3	Hydrocodone/APAP 10/325	50
124755	Sood	2	3	Hydrocodone/APAP 10/325	100
124757	Sood	2	3	Hydrocodone/APAP 10/325	100
125126	Ibanez	2	3	Hydrocodone/APAP 10/325	90
125637	Starks	2	3	Hydrocodone/APAP 10/500	120
125728	Ibanez	2	3	Alprazolam 1 mg.	90
125799	Ibanez	2	3	Hydrocodone/APAP 10/325	90
125915	Ibanez	2	3	Hydrocodone/APAP 10/325	90
125940	Orta-Rosario	2	3	Hydrocodone/APAP 20/325	40
125970	Orta-Rosario	2	3	Hydrocodone/APAP 10/325	80
125989	Starks	2	3	Hydrocodone/APAP 10/500	120
125990	Starks	2	3	Alprazolam 1 mg.	60
126072	Starks	2	3	Hydrocodone/APAP 10/500	70
				TOTAL	2,855

XLVI.

Prescriptiononline.com's records show that none of the refills in the table in averment ** were authorized by the physicians who wrote the prescriptions.

XLVII.

In providing refills for prescriptions for controlled substances that were not authorized by the physicians who wrote the original prescriptions, Mr. Auralle and Ms.

Levitt violated NRS 639.210(4) and (15), 639.2393(3), and 639.2396 and NAC 639.945(1)(i). Each of the 32 controlled substances prescriptions for which an unauthorized refill was made constitutes a separate count for disciplinary purposes under NRS 639.255(1)(f), and a separate fine or other discipline may be imposed for each such unauthorized refill.

THIRTEENTH CAUSE OF ACTION

XLVIII.

In providing refills for prescriptions for controlled substances that were not authorized by the physicians who wrote the original prescriptions, Prescriptiononline.com violated NRS 639.210(4) and (15), 639.2393(3), and 639.2396 and NAC 639.945(1)(i) and (2). Each of the 32 controlled substances prescriptions for which an unauthorized refill was made constitutes a separate count for disciplinary purposes under NRS 639.255(1)(f), and a separate fine or other discipline may be imposed for each such unauthorized refill.

FOURTEENTH CAUSE OF ACTION

IL.

An analysis of Prescriptiononline.com's prescriptions filled from March through October 2002 showed that Prescriptiononline.com routinely refilled controlled substances prescriptions earlier than were authorized by the prescribing physician. The analysis allowed for at least seven days' advance ordering of a refill to acknowledge the time necessary for the order to be processed and sent to a patient. The analysis showed a total of 647 prescriptions that had at least one refill that was made earlier than seven days before the refill would otherwise have been authorized. Of these 647

prescriptions. Board staff only examined the most egregious of these early refills which are included on the following table:

Rx #	Doctor	Days Supply	Days Early on Refill #1	Days Early on Refill #2	Days Early on Refill #3 (NOTE: All 5 th Refills Were Unauthorized)	Drug	Qty
120812	Dale	30	11	14	--	Hydrocodone/APAP 10/650	120
121095	Dale	60	35	32	--	Butorphanol Tartrate NS	3
121147	Dale	30	10	11	--	Diazepam 10 mg.	60
121184	Opsahl	90	77	--	--	Hydrocodone/APAP 10/500	120
121186	Opsahl	90	77	--	--	Diazepam 10 mg.	90
121193	Dale	30	10	11	--	Alprazolam 2 mg.	60
121703	Opsahl	30	4	16	--	Hydrocodone/APAP 10/325	120
122025	Opsahl	30	22	--	--	Diethylpropion 25 mg.	90
122233	Opsahl	30	10	10	--	Hydrocodone/APAP 10/325	120
122527	Opsahl	60	36	--	--	Ambien 10 mg.	60
122733	Dale	60	35	--	--	Alprazolam 2 mg.	60
123045	Dale	30	12	8	--	Alprazolam 1 mg.	90
123178	Dale	30	14	10	--	Hydrocodone/APAP 10/325	120
123234	Dale	30	10	17	--	Hydrocodone/APAP 10/500	120
123235	Dale	30	10	17	--	Diazepam 10 mg.	60
123245	Dale	30	15	2	--	Alprazolam 1 mg.	60
123303	Dale	30	0	16	17	Alprazolam 1 mg.	30
123309	Dale	30	14	5	--	Alprazolam 2 mg.	60
123498	Dale	30	10	16	--	Diazepam 10 mg.	60
123622	Dale	30	16	8	--	Alprazolam 2 mg.	60
123681	Dale	30	0	14	--	Hydrocodone/APAP 10/500	120
124129	Williams	45	21	--	--	Hydrocodone/APAP 10/325	90
124152	Sood	30	9	15	--	Alprazolam 1 mg.	90
124155	Sood	40	16	19	--	Hydrocodone/APAP 10/500	120
124266	Sood	40	12	14	--	Hydrocodone/APAP 10/325	120
124372	Sood	40	17	13	--	Alprazolam 1 mg.	120
124450	Sood	40	18	18	--	Hydrocodone/APAP 10/325	120
124631	Sood	40	0	17	7	Hydrocodone/APAP 10/500	120
124665	Sood	45	24	11	--	Ambien 10 mg.	45
124681	Sood	45	20	14	--	Lorcet Plus	180
124695	Sood	40	0	0	19	Hydrocodone/APAP 10/325	120
124716	Sood	50	0	0	27	Hydrocodone/APAP 10/325	75
125479	Ibanez	30	13	15	--	Hydrocodone/APAP 7.5/750	60
125490	Ibanez	30	28	3	--	Hydrocodone/APAP 10/500	90
125524	Ibanez	45	17	16	--	Hydrocodone/APAP 10/325	90

125551	Orta-Rosario	60	34	36	--	Alprazolam 2 mg.	60
125728	Ibanez	30	0	28	3	Alprazolam 1 mg.	90
125890	Orta-Rosario	48	21	--	--	Tussionex ER	480 ml
125940	Orta-Rosario	30	0	16	9	Hydrocodone/APAP 10/325	40
125968	Orta-Rosario	40	17	12	--	Hydrocodone/APAP 10/325	80
125970	Orta-Rosario	40	0	14	15	Hydrocodone/APAP 10/325	80
126020	Starks	60	27	--	--	Ambien 10 mg.	60
126091	Orta-Rosario	40	16	11	--	Hydrocodone/APAP 10/325	80
126175	Orta-Rosario	40	14	--	--	Hydrocodone/APAP 10/325	80
126177	Orta-Rosario	40	13	--	--	Hydrocodone/APAP 10/325	80
126178	Orta-Rosario	40	17	--	--	Hydrocodone/APAP 10/325	80
126191	Orta-Rosario	40	11	--	--	Hydrocodone/APAP 10/325	80
126265	Orta-Rosario	40	13	--	--	Hydrocodone/APAP 10/325	80
126266	Orta-Rosario	40	15	--	--	Hydrocodone/APAP 10/325	80
127121	Starks	30	21	--	--	Alprazolam 1 mg.	30
						TOTAL (solid dosage units only)	4,210

L.

Prescriptiononline.com's records show that none of the early refills in the table in averment IL were authorized by the physicians who wrote the prescriptions.

LI.

In providing early refills for prescriptions for controlled substances that were not authorized by the physicians who wrote the original prescriptions, Mr. Auralle and Ms. Levitt violated NRS 639.210(4) and (15) and 639.2396 and NAC 639.945(1)(i). Each of the 82 controlled substances prescriptions for which an unauthorized early refill was made constitutes a separate count for disciplinary purposes under NRS 639.255(1)(f), and a separate fine or other discipline may be imposed for each such unauthorized early refill.

FIFTEENTH CAUSE OF ACTION

LII.

In providing early refills for prescriptions for controlled substances that were not authorized by the physicians who wrote the original prescriptions, Prescriptiononline.com violated NRS 639.210(4) and (15) and 639.2396 and NAC 639.945(1)(i) and (2). Each of the 82 controlled substances prescriptions for which an unauthorized early refill was made constitutes a separate count for disciplinary purposes under NRS 639.255(1)(f), and a separate fine or other discipline may be imposed for each such unauthorized early refill.

SIXTEENTH CAUSE OF ACTION

LIII.

The operation of Prescriptiononline.com is entirely based upon the use of the Internet. Prescriptiononline.com maintains and operates its own website through which it solicits prescriptions and otherwise communicates with its patients and potential patients. The physicians who wrote the bulk of the prescriptions filled by Prescriptiononline.com did so through their own websites through which they solicited and communicated with their patients and potential patients.

LIV.

In the 2001 legislative session, the Nevada Legislature created the Nevada Illegal Internet Pharmacy Act, now codified as NRS 453.3611 through 453.3648. The Illegal Internet Pharmacy Act became effective October 1, 2001.

LV.

Pursuant to the authority in the Illegal Internet Pharmacy Act, the Board created and passed regulations, presently codified at NAC 639.420 through 639.428. The new regulations became effective on December 17, 2001.

LVI.

After retaining the services of an Internet expert to identify all of the potential Internet websites that might be advertising or selling prescription drugs, on July 25, 2002, the Board staff sent an e-mail to all identified websites informing them of the new Illegal Internet Pharmacy Act and inviting them to become licensed and certified in Nevada as Internet pharmacies.

LVII.

Prescriptiononline.com was one of the sites to receive the Board's e-mail notification regarding the new Illegal Internet Pharmacy Act.

LVIII.

Prescriptiononline.com has never applied to be and is not certified in Nevada to serve the public as an Internet pharmacy, even though the Internet is the primary means by which Prescriptiononline.com advertises, operates, and communicates with the public.

LIX.

Since October 1, 2001, Prescriptiononline.com has filled 46,514 controlled substances prescriptions. Since December 17, 2001, Prescriptiononline.com has filled 35,439 controlled substance prescriptions. Since July 25, 2002, Prescriptiononline.com

has filled 6,000 controlled substances prescriptions. Most of these prescriptions were filled by Mr. Auralle or Ms. Levitt.

LX.

In operating a pharmacy in violation of the Illegal Internet Pharmacy Act, Prescriptiononline.com violated NRS 639.210(4) and (15) and 453.3638(1) and NAC 639.945(1)(i) and (k), and (2). Each of as many as 46,514 controlled substances prescription filled or refilled in violation of the Illegal Internet Pharmacy Act constitutes a separate count for disciplinary purposes under NRS 639.255(1)(f), and a separate fine or other discipline may be imposed for each such prescription.

SEVENTEENTH CAUSE OF ACTION

LXI.

In filling, refilling, dispensing, or otherwise assisting or aiding Prescriptiononline.com in violating the Illegal Internet Pharmacy Act, Mr. Auralle and Ms. Levitt violated NRS 639.210(4) and (15) and 453.3638(1) and (3) and NAC 639.945(1)(i) and (k). Each of as many as 46,514 controlled substances prescription filled or refilled in violation of the Illegal Internet Pharmacy Act constitutes a separate count for disciplinary purposes under NRS 639.255(1)(f), and a separate fine or other discipline may be imposed for each such prescription.

EIGHTEENTH CAUSE OF ACTION

LXII.

Patient H and her daughter, Patient B, both had prescriptions filled and refilled at Prescriptiononline.com (Rx ##103011, 103433, and 117638 for Patient H and Rx

##111839 for Patient B). The prescriptions were all written by Dr. Opsahl. Both Patient H and Patient B contacted Dr. Opsahl exclusively through the telephone: neither Patient H nor Patient B was ever physically examined by Dr. Opsahl. The prescriptions were filled or refilled from July 20, 2001 through February 25, 2002 and were primarily for hydrocodone/APAP 10/500 #120, although one of Patient H's prescriptions (filled and refilled twice) was for temazepam 30 mg. #30.

LXIII.

During the period in which Prescriptiononline.com was filling prescriptions for Patient H and Patient B, Patient H became aware that her daughter, Patient B, was receiving hydrocodone products from numerous pharmacies and that her daughter was addicted to hydrocodone products, taking between fifteen and twenty hydrocodone tablets per day. Patient H called Dr. Opsahl and informed him that Patient B was addicted to hydrocodone and asked him to cease prescribing hydrocodone to Patient B. Dr. Opsahl informed Patient H that he would continue to prescribe hydrocodone to Patient B.

LXIV.

Patient H also contacted Prescriptiononline.com and spoke with Michael Cosenza. Patient H informed Mr. Cosenza that Patient B was addicted to hydrocodone and asked Mr. Cosenza to have Prescriptiononline.com cease filling hydrocodone prescriptions for Patient B. Mr. Cosenza informed Patient H that Prescriptiononline.com would not cease providing hydrocodone to Patient B.

LXV.

In late December 2001 and throughout 2002, Patient H was able to talk Patient B into drug treatment. Patient B was treated at first on an in-patient basis, followed by an

extensive period of detoxification through methadone treatments. Patient B's license as a nurse was revoked as a result of her drug-seeking behavior. Patient H ceased taking hydrocodone in the spring of 2002.

LXVI.

In providing controlled substances, namely hydrocodone, to a patient with knowledge that the controlled substance was not being prescribed or used for a legitimate medical purpose and was, instead, being used to perpetuate an addiction, Prescriptiononline.com violated NRS 639.210(4), (12) and (15), NAC 453.430(2) and 639.945(1)(g) and (i) and (2), and 21 C.F.R. § 1306.04(a) and (c).

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

Signed this _____ day of December, 2002.

Keith W. Macdonald, 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.