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IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR WASHOE COUNTY

NEVADA OSTEOPATHIC MEDICAL ASSOCIATION, Nevada Domestic Nonprofit Cooperative Corporation; and BRUCE FONG, DO, HMD, an individual; Plaintiffs/Petitioners, vs. THE HONORABLE STEPHEN F. SISOLAK, as Governor of the State of Nevada; STATE OF NEVADA, NEVADA STATE BOARD OF PHARMACY, an administrative agency of the State of Nevada; and STATE OF NEVADA, CHIEF MEDICAL OFFICER, IHSAN AZZAM, Ph.D., M.D., Defendants/Respondents.	Case No.: Dept. No.: **COMPLAINT FOR EMERGENCY DECLARATORY RELIEF** **Exempt from Arbitration NAR 3(A), NAR 5** • **Action for Declaratory Relief** • **Action Presenting a Significant Issue of Public Policy** • **Action Seeking Equitable or Extraordinary Relief**

The NEVADA OSTEOPATHIC MEDICAL ASSOCIATION, a Nevada Domestic Nonprofit Cooperative Corporation ("NOMA") and BRUCE FONG, D.O., an individual ("Fong") (NOMA and Fong, individually and collectively, "Plaintiffs"), by and through their undersigned attorneys of record, hereby file this Complaint for Emergency Declaratory Relief asking the Court to declare the Nevada State Board of Pharmacy's March 23, 2020, Emergency Regulation restricting the use of hydroxychloroquine and/or chloroquine void and invalid and

either prohibit its enforcement or mandate that the Board of Pharmacy rescind it and/or amend it.

JURISDICTION AND VENUE

1. This Court has jurisdiction over this action. *See e.g.,* NRS 233B.110; NRS 241.037; Nevada's Uniform Declaratory Judgments Act, NRS 30.010, et. seq.; and NRS 33.010.

2. Plaintiff NOMA is made up of one or more physicians that are citizens of the State of Nevada, reside in the Second Judicial District of Washoe County, and/or conduct business in the State of Nevada.

3. Plaintiff Fong is an individual residing in Washoe County, Nevada, and is the President of NOMA.

4. Plaintiffs' claims, or some part thereof, arise out of Defendants' activities within the jurisdiction of the Second Judicial District Court of Washoe County.

5. Venue is proper in the Second Judicial District Court of Washoe County. *See* NRS 13.020 and/or NRS 13.040.

PARTIES

6. Plaintiff NOMA is a Domestic Nonprofit Cooperative Corporation organized under the laws of the State of Nevada, with its principal place of business in Washoe County, Nevada.

7. Plaintiff Fong is an individual residing and doing business in Washoe County, Nevada, and is an Osteopathic physician licensed by the Nevada State Board of Osteopathic Medicine.

8. Defendant, the Honorable Stephen F. Sisolak, is the duly elected Governor of the State of Nevada (the "Governor" or "Governor Sisolak").

9. Defendant, the State of Nevada, Nevada State Board of Pharmacy is an administrative agency of the State of Nevada and consists of seven members appointed by the Governor ("BOP").

10. Defendant, State of Nevada, Chief Medical Officer, Ihsan Azzam, Ph.D., M.D., is the Chief Medical Officer of the State of Nevada, is in the unclassified service of the State

and serves at the pleasure of the Director of the Department of Health and Human Services ("CMO").

11. Governor Sisolak, the BOP, and the CMO are individually and collectively referred to herein as the "Defendants".

BASIS FOR EMERGENCY RELIEF

12. Because this matter pertains to a declared state of emergency, Plaintiffs hereby request a speedy hearing on the declaratory judgment claims presented herein. *See* NRCP 57 (stating, "[t]he court may order a speedy hearing of a declaratory-judgment action").

FACTUAL ALLEGATIONS

13. On January 31, 2020, the Secretary of the U.S. Department of Health and Human Services ("HHS") determined that a significant public health threat existed which affected national security, due to a new virus named SARS-CoV-2, which causes the illness COVID-19 ("COVID-19").[1]

14. COVID-19 is an infectious disease caused by the most recently discovered coronavirus, which is from a family of viruses that are known to cause SARS.[2] An infectious disease is one caused by pathogenic microorganisms, which spread, either directly or indirectly, from one person to another, and such term includes a communicable disease. *See* NRS 441A.063. The SARS virus is classified as a communicable disease. *See* NAC 441A.040.

15. On March 6, 2020, the President of the United States signed the Coronavirus Preparedness and Response Supplemental Appropriations Act, which contained more than $8 billion in funding[3], of which $515,162 was earmarked to support eight Nevada health centers. *See* **Exhibit "1"**.

16. On March 12, 2020, Governor Sisolak issued a proclamation declaring a state of emergency pursuant to NRS Chapter 414 and called upon the agencies of this State to

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[1] https://www.phe.gov/emergency/news/healthactions/phe/Pages/2019-nCoV.aspx
[2] https://www.who.int/news-room/q-a-detail/q-a-coronaviruses
[3] https://www.hhs.gov/about/news/2020/03/24/hhs-awards-100-million-to-health-centers-for-covid-19-response.html

supplement the efforts and capabilities of all localities to save lives and protect the health and safety of Nevada citizens in coordination with the Federal Government. *See* **Exhibit "2**".

17. On March 14, 2020, Governor Sisolak activated the State Emergency Operations Center, and formed a medical advisory team consisting of the CMO and four additional medical experts.[4]

18. If the CMO is not licensed to practice medicine in this State, and the CMO here is not, he shall not, in carrying out the duties of CMO, engage in the practice of medicine. *See* NRS 439.130.[5]

19. When the Governor determines there is a public health emergency, he must issue an executive order and designate an emergency team who is charged with working with each state agency and board to disseminate and share information. *See* NRS 439.970; NRS 439.975. However, the scope of the emergency team's power only extends administratively and does not supersede the health authority having jurisdiction over the emergency or health event. *See* NRS 439.975.

20. On March 23, 2020, based upon the recommendation provided by the Governor's COVID-19 Medical Advisory Team, the BOP sought and received endorsement by Governor Sisolak for its own statement of emergency, by letter of the same date, in order to adopt emergency regulations restricting the "prescribing and dispensing" of chloroquine and hydroxychloroquine for patients outside of a hospital setting. *See* **Exhibit "3"**. Specifically, the BOP cited "the hoarding and stockpiling" of these drugs during the COVID-19 pandemic, and the "resulting shortage of supplies of these drugs for legitimate medical purposes" as the basis for its statement of emergency. *Id*. The BOP further claimed that hydroxychloroquine is under investigation for use in the treatment of COVID-19, but that its safety and efficacy have not been established. *Id*. However, the BOP failed to provide any evidence, let alone sufficient

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[4]http://gov.nv.gov/News/Press/2020/Governor_Sisolak_Forms_Medical_Advisory_Team_to_Provide_Guidance_on_COVID-19/

[5] https://www.washingtontimes.com/news/2018/sep/11/ihsan-azzam-nevada-chief-medical-officer-not-licen/

evidence, in support of these claims, or its reasons for the existence of an emergency necessitating or justifying the emergency action taken.

21. On March 23, 2020, that same day, and without providing supporting evidence sufficient to reasonably determine the existence of an emergency and having failed to provide even minimally effective public notice, the BOP held an emergency meeting to hear the "Discussion and Possible Action on Adoption of Emergency Regulations pursuant to NRS 233B.0613 to Restrict the Prescribing and Dispensing of Chloroquine or Hydroxychloroquine in Response to Covid-19 (**FOR POSSIBLE ACTION)**." *See* **Exhibit "4" (**the "Agenda" at p. 2, item 3) (emphasis in original); *see also* NRS 241.015; NRS 241.020.

22. The Agenda states that a public notice of the emergency meeting was given the same day as the meeting. However, any such notice failed to meet the minimum requirements set forth in NRS 241.020 and 233B.0614, as even the BOP members were only provided notification of the meeting via email at 2:59 p.m., with the meeting held by teleconference at 3:30 p.m. *See* **Exhibit "5"**. In this, the BOP did not take comments from the general public as required under NRS 241.020. *See* NRS 241.020 (stating that, "[n]o action may be taken upon a matter raised under this item of the agenda until the matter itself has been specifically included on a future agenda as an item…").

23. As stated in its Agenda, the BOP declared that "[i]n regulating the practice of pharmacy, the Nevada State Board of Pharmacy has a duty to carry out and enforce the provisions of Nevada law to protect the health, safety and welfare of the public." *See* Exhibit "4".

24. On March 23, 2019, citing NRS 639.070 as its statutory authority, the BOP passed an Emergency Administrative Regulation that "restricts the prescribing and dispensing of chloroquine and hydroxychloroquine during the COVID-19 outbreak." *See* **Exhibit "6"** (the "Emergency Regulation").

25. The Emergency Regulation prohibits physicians from issuing, and pharmacists from filling and/or dispensing, chloroquine and/or hydroxychloroquine to an individual for a COVID-19 diagnosis outside of a hospital setting.

26. By adopting the Emergency Regulations, the BOP is, in effect, both impermissibly practicing medicine and illegitimately restricting where the practice of medicine can occur. *See, e.g.,* NRS 630.020; NRS 630.049. In short, the Emergency Regulation restricts a patient's right to approved treatment for a communicable disease pursuant to a valid prescription.

27. The practice of medicine in Nevada requires licensure. *See, e.g.,* NRS 630.160; NRS 630A.230.

28. The BOP does not have the authority to prescribe medication, cannot prohibit the prescription of medication, and certainly cannot interfere with a physician's treatment of patients in any setting. *See, e.g.,* NRS 630.160; NRS 630.020; NRS 639.0124; NRS 639.0709; NRS 441A.200.

29. It is physicians, under the license issued them by their respective medical licensing boards, who are granted the authority and privilege to practice medicine in Nevada. *See, e.g.,* NRS 630.160.

30. The Nevada Legislature has limited the BOP's authority to adopting regulations governing the practice of pharmacy, the sale and dispensing of drugs, and those pertaining to the practice of pharmacy that are necessary for the protection of the public. *See* NRS 639.070. However, the regulations adopted by the BOP cannot be inconsistent with Nevada law. *See* NRS 639.070(1)(a).

31. Nevada statute expressly defines the "practice of medicine" to mean "**to diagnose, treat, correct, prevent, <u>or prescribe</u>** for any human disease, ailment, injury, infirmity, deformity or other condition, physical or mental, by any means or instrumentality . . . . " *See* NRS 630.0209(1) (emphasis added).

32. The practice of medicine in Nevada is not limited to the hospital setting—it occurs no matter where the physician meets the patient. *See* NRS 630.049.

33. The ability of a physician, specifically a primary care physician, to diagnose and treat his or her patient is essential and fundamental to the practice of medicine, and a primary care physician may be the one able to most accurately recognize an immediate and significant

decline in a patient's health, and suggest therapeutic intervention when it is needed most. Such a decline could be the beginning of a cascade of events that could ultimately result in the patient's death. And with COVID-19, if the therapeutic window is missed, there is likely no second chance. *See* **Exhibit "7"**.

34. Not only did the BOP overstep its authority by enacting the Emergency Regulation, each of its stated concerns supporting the Emergency Regulation was, or has been, addressed and/or resolved at the federal level.

35. Specifically: (1) WHO has issued several approved ICD-10 codes for COVID-19; (2) chloroquine and hydroxychloroquine were already drugs approved for use by the FDA, which meant that the FDA authorized their prescription by physicians for both approved and off-label uses; (3) the FDA then provided further assurances of these drugs by issuing an Emergency Use Authorization ("EUA") that provided emergency approval of these drugs for use in the treatment of COVID-19; (4) the President of the United States then acquired additional supplies of these drugs; (5) the Federal Strategic National Stockpile ("SNS") authorized the distribution of its own supply of these drugs to supplement each state's respective stockpile; and (6) drug manufacturers who regularly manufactured these drugs have already re-stocked, ramped-up production, and begun donating their supplies.

36. On March 25, 2020, the World Health Organization ("WHO") provided several new ICD-10 codes for COVID-19, and specifically, for cases where: (a) the virus is identified; and (b) for instances where the virus is not identified, for: (i) clinically-epidemiologically diagnosed COVID-19 cases; (ii) probable COVID-19 cases; and (iii) suspected COVID-19 cases.[6] *See* **Exhibit "8"**.

37. As part of ICD's clinical coding of COVID-19, further delineation was made between confirmed cases and suspected or probable cases, whereby additional codes are to be

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[6] https://www.who.int/classifications/icd/covid19/en/

provided by physicians for a patient's respective symptoms, and also those codes necessary for reporting intervention, procedure, isolation, and laboratory examination. *Id*.

38. The distinction of codes encourages the reporting of not just confirmed, but suspected, probable, and negative cases, and guidance was even provided on when it is appropriate to test.[7]

39. Each of these instances pertain specifically to a medical determination made by a healthcare provider, on an individual basis for each patient.

40. On March 27, 2020, pursuant to Section 564(b)(1)(C) of the Federal Food, Drug and Cosmetic Act ("Act") (*see* 21 U.S.C. § 360bbb-3), the Secretary of HHS declared that "circumstances exist justifying the authorization of emergency use of drugs and biologics during the COVID-19 outbreak…." *See* **Exhibit "9"**.

41. As such, on March 28, 2020, RADM Denise Hinton, Chief Scientist of the FDA, declared that after "[h]aving reviewed the scientific information available to FDA, including the information supporting the conclusions described in Section I of [the EUA], …that chloroquine phosphate and hydroxychloroquine sulfate (as described in the Scope of Authorization of this Letter (Section II) meets the criteria set forth in Section 564(c) of the Act concerning safety and potential effectiveness," and "these products are authorized for the treatment of 2019 coronavirus disease (COVID-19) when administered by a HCP [health care provider] pursuant to a valid prescription of a licensed practitioner as described in the Scope of Authorization (section II) of this letter." *See* **Exhibit "10"** (the "EUA").

42. As part of the EUA's authorization, the FDA found chloroquine and hydroxychloroquine to be effective in treating COVID-19 and reasonably safe for the purposes specified and has permitted the emergency use of chloroquine phosphate and hydroxychloroquine sulfate for the treatment of COVID-19. *Id*.

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[7] *Id*.

43. Specifically, "FDA is issuing this EUA to facilitate the availability of chloroquine phosphate and hydroxychloroquine sulfate during the COVID-19 pandemic to treat patients for whom a clinical trial is not available, or participation is not feasible." *Id*.

44. Prior to the EUA, chloroquine phosphate and hydroxychloroquine sulfate were already drugs approved for use by the FDA[8], and were already being used by physicians in the treatment of COVID-19[9].

45. The authorization provided under the EUA is separate and distinct from the authorization provided to a licensed practitioner by the FDA to prescribe an FDA-approved drug to its patient for an off-label use in the treatment of an illness or disease.

46. "From the FDA perspective, once the FDA approves a drug, healthcare providers generally may prescribe the drug for an unapproved use when they judge that it is medically appropriate for their patient…. In situations like these, you and your healthcare provider may talk about using an approved drug for an unapproved use to treat your disease or medical condition."[10]

47. It is clearly established Federal law that the practice of prescribing drugs or devices for "off-label" uses is allowed by the FDA and the FDCA.[11] The United States Supreme Court has recognized as much, quoting the following passage with approval: "Off-label use is widespread in the medical community and often is essential to giving patients optimal medical care, both of which medical ethics, FDA, and most courts recognize." *Buckman Co. v. Plaintiffs' Legal Committee*, 531 U.S. 341, 351 n. 5 (2001); *see also U.S. v. Kaplan*, 836 F.3d 1199, 1210-11 (9th Cir. 2006) (acknowledging the existence of an off-label use "privilege" under FDCA for prescriptions of drugs and devices); *In re Gilead Sciences Securities Litigation*, 536 F.3d 1049, 1051 n.2 (9th Cir. 2008) (physicians are free under FDCA to prescribe drugs off-label).

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[8] https://www.accessdata.fda.gov/scripts/cder/daf/index.cfm?event=BasicSearch.process
[9] https://clinicaltrials.gov/ct2/results?cond=COVID-19
[10] https://www.fda.gov/patients/learn-about-expanded-access-and-other-treatment-options/understanding-unapproved-use-approved-drugs-label
[11] https://www.fda.gov/patients/learn-about-expanded-access-and-other-treatment-options/understanding-unapproved-use-approved-drugs-label/

48. Even prior to the FDA's EUA, the prescribed off-label use of chloroquine and/or hydroxychloroquine by a physician to treat COVID-19 was regarded under the Federal regulatory scheme as the lawful practice of medicine.

49. The Nevada Legislature has even declared that "all functions of emergency management in this state be coordinated to the maximum extent with the comparable functions of the Federal Government, including its various departments and agencies…." *See* NRS 414.020(2).

50. And, as part of the statutory mandate to adopt regulations governing the control of communicable diseases, the State Board of Health has specifically adopted the recommendations, guidelines, and publications of various federal agencies as set forth in NAC 441A.200, which provide recommended guidance for the "investigation, prevention, suppression and control of communicable diseases," of which district health officers and the CMO are required to implement. *See* NRS 441A.120; NAC 441A.200; *see also* NRS 441A.050.

51. In addition to the FDA's authorization of off-label use of approved drugs, 21 U.S.C. § 360bbb-3 provides that the Secretary of the HHS may authorize, during the effective period of an emergency use declaration, the emergency unapproved use of an approved product.

52. "Hydroxychloroquine sulfate and [medical grade chloroquine phosphate] are oral prescription drugs approved to treat malaria and other diseases. Although there are no currently approved treatments for COVID-19, both drugs have shown activity in laboratory studies against coronaviruses, including SARS-CoV-2 (the virus that causes COVID-19)"... and "[a]necdotal reports suggest that these drugs may offer some benefit in the treatment of hospitalized COVID-19 patients."[12]

53. There is an adequate supply of these drugs. For example: "Sandoz and Bayer are the latest companies stepping up to strengthen the U.S. response to COVID-19, and [the Assistant Secretary for Preparedness and Response] is working with additional companies

[12] https://www.hhs.gov/about/news/2020/03/29/hhs-accepts-donations-of-medicine-to-strategic-national-stockpile-as-possible-treatments-for-covid-19-patients.html

willing to donate doses of these drugs…. Use of the donated medication is expected to help ease supply pressures for the drug, and the FDA is also working with manufacturers of these products to increase production to ensure these drugs also remain available for patients dependent on them for treatment of malaria, lupus, and rheumatoid arthritis."[13]

54. On March 29, 2020, the HHS accepted 30 million doses of hydroxychloroquine sulfate donated by Sandoz, and one million doses of medical grade chloroquine phosphate donated by Bayer Pharmaceuticals, for possible use in treating patients hospitalized with COVID-19 or for use in clinical trials.[14]

55. Further, the Federal Emergency Management Authority ("FEMA") stated that it would make available and would distribute provisions of chloroquine phosphate and hydroxychloroquine sulfate from the SNS to state healthcare systems and healthcare providers, to be used in accordance with the Federal Factsheets provided.[15]

56. Chapter 441A of NRS and NAC mandate that persons of this State have access to testing and treatment and, if a physician deems it appropriate for that individual, that physician must be permitted and able to prescribe hydroxychloroquine and chloroquine.

57. As a result of the March 23, 2020, adoption of the Emergency Regulation, not only are pharmacists prohibited from filling and dispensing chloroquine and/or hydroxychloroquine to patients with valid prescriptions, but hospitals are refusing to admit, test, and/or treat symptomatic individuals and individuals who have tested positive for COVID-19 if their symptoms are not yet severe enough to require hospitalization.

58. Not only has the BOP purported to practice medicine and adopted a regulation that restricts access to a potential life-saving treatment, but it has done so in the midst of a global crisis and healthcare pandemic, to the detriment of Nevada citizens. This unlawful action must be corrected.

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[13] *Id.*
[14] *Id*.
[15] *Id*.

CLAIM ONE
(Declaratory Relief)

59. The allegations above are incorporated as if fully set forth here.

60. A justiciable controversy exists that warrants declaratory judgment pursuant to Nevada's Uniform Declaratory Judgments Act, under NRS 30.010 to 30.160 inclusive because the Emergency Regulation interferes with and impairs Plaintiff's rights, status, and other legal relations.

61. NRS 233B.110 provides that the validity or applicability of any regulation may be determined in a proceeding for a declaratory judgment when it is alleged that the regulation interferes with or impairs legal rights or privileges.

62. NRS 441A.200 creates three statutory rights: (1) the right of an individual to receive approved treatment for a communicable disease; (2) the right of an individual to receive approved treatment from any physician, clinic, or person of his or her choice; and (3) the right of a physician to provide treatment to an individual with a communicable disease. *See* NRS 441A.200.

63. The Emergency Regulation violates the rights of Plaintiffs and Nevada citizens by: (1) restricting the right of an individual to receive approved treatment for a communicable disease; (2) restricting the right of an individual to receive approved treatment from the physician, clinic, or person of his or her choice; (3) restricting the right of a physician to provide treatment to an individual with a communicable disease outside of a hospital setting; (4) empowering and authorizing pharmacists to interfere with the right of a person to receive approved treatment for a communicable diseases from their physician of their choice; (5) empowering and authorizing pharmacists to interfere with the right of a physician to provide approved treatment for a communicable disease; (6) restricting a physician's authority and privilege to practice medicine; and (7) impermissibly restricting where the practice of medicine may take place.

64. Licensed physicians in Nevada have the right to provide—and the people of this State have the right to receive—approved treatments for COVID-19, regardless of whether a

person has been hospitalized. No person—not Governor Sisolak, not the BOP, and not the CMO—is empowered or authorized interfere with these rights.

65. The Emergency Regulation, as adopted, interferes with and impairs the legal rights and privileges of Plaintiffs and patients in Nevada, and more particularly it:

a) Unlawfully restricts Plaintiffs' privilege and authority to practice medicine;

b) Unlawfully restricts Plaintiffs' right to provide approved treatment to individuals with a communicable disease;

c) Unlawfully restricts Plaintiffs' privilege and authority to practice medicine at any place where the patient is located;

d) Unlawfully restricts a patent's right to receive approved treatment for a communicable disease from the physician, clinic, or person of his or her choice; and,

e) Unlawfully empowers and authorizes pharmacists to interfere with the rights of a patient testing positive for COVID-19 to receive hydroxychloroquine and/or chloroquine pursuant to a valid prescription.

66. The Emergency Regulation, as adopted, exceeds the statutory authority of Defendants and results in the unauthorized practice of medicine, specifically:

a) NRS 630.020 does not authorize Defendants to practice medicine and adoption of the Emergency Regulation by Defendants constitutes the practice of medicine and a violation of this statutory provision; and

b) NRS 639.070 does not authorize Defendants to adopt regulations that are inconsistent with the laws of this State, nor does it authorize Defendants to adopt regulations that constitute the practice of medicine.

67. The Emergency Regulation was not narrowly tailored in any way to carry out any legitimate government interest at stake and, as adopted, violates numerous constitutional and statutory provisions, specifically:

a) The Emergency Regulation is preempted by federal law and impermissibly restricts the issuance, filling, and dispensing of an FDA-approved drug issued

pursuant to a valid prescription;

b) The Emergency Regulation violates Plaintiffs' and their patients' constitutional rights to privacy—the right of an individuals to protect their health by making autonomous decisions about medical treatment with a physician of their choice is a fundamental right that cannot be abridged or dictated by Defendants and no justification was provided by the BOP that would warrant such an intrusion, not even a declaration by the Governor of a state of emergency;

c) The Emergency Regulation violates Plaintiffs' and their patients' constitutional right to equal protection under Amendment XIV, Section 1, of the U.S. Constitution—particularly because the Emergency Regulation (and its subsequent waiver) authorizes hospital physicians to issue, fill, and dispense a drug, while prohibiting non-hospital physicians from doing so; and,

d) The Emergency Regulation violates Plaintiff's and their patient's due process right under Article I, Section 8, of the Nevada Constitution, and Amendment V, Section 1, and Amendment XIV, Section 1, of the U.S. Constitution—in particular because it restricts the practice of medicine under a valid medical license without due process.

68. NRS 233B.0617 provides that no regulation is valid unless adopted in substantial compliance with the procedural requirements of NRS 233B.060 to 233B.0617, inclusive (the "Nevada Administrative Procedure Act"). The Emergency Regulation was not adopted in substantial compliance with the procedural requirements of the Nevada Administrative Procedure Act, for example:

a) Proper notice of the proposed Emergency Regulation, or the meeting adopting it, was not given (*see* NRS 233B.060; NRS 233B.0613);

b) No evidentiary support for the purported emergency supporting the Emergency Regulation existed (*see* NRS 233B.0613);

c) The Emergency Regulation was made impermissibly effective for a period of longer than 120 days (*see* NRS 233B.0613(4)); and,

d) No explanatory statement describing the Emergency Regulation (or the reason for it) was filed with the Legislative Counsel within 5 working days of the emergency meeting and adoption of the Emergency Regulation, in violation of NRS 233B.0658.

69. NRS 241.036 provides that any action of a public body taken in violation of Nevada's open meeting law is void. The Emergency Regulation was adopted in violation of Chapter 241 of NRS ("Nevada's Open Meeting Law"). For example:

a) Defendants held a closed emergency meeting and did not permitting all persons to attend (*see* NRS 241.020);

b) Adoption of the Emergency Regulation contravened Plaintiffs' right to receive notice of the meeting, to attend the meeting, and to provide general comments on the Agenda items (*see* NRS 241.020);

c) No valid emergency existed and no sufficient supporting material was presented to determine that an emergency actually existed (*see* NRS 241.020(3));

d) No valid exception to Nevada's Open Meeting Law existed (*see* NRS 241.030);

70. Plaintiff requests the Court issue a declaratory judgment finding that the Emergency Regulation:

a) Impermissibly interferes with and impairs the rights of Plaintiffs to practice medicine and the corresponding rights of Nevada patients;

b) Is invalid because exceeds the Defendants' statutory and regulatory authority;

c) Is invalid because it violates the Nevada Constitution;

d) Is invalid because it violates the United States Constitution;

e) Is invalid because it was adopted in violation of the Nevada Administrative Procedure Act;

f) Is void because it was adopted in violation of Nevada's Open Meeting Law; and

g) Is pre-empted by federal law.

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CLAIM TWO
(Injunctive Relief)

71. The allegations above are incorporated as if fully set forth here.

72. A justiciable controversy exists that warrants injunctive relief pursuant to NRS 33.010 because further implementation and enforcement of the Emergency Regulation by Defendants during this litigation will produce great and irreparable injury to Plaintiffs and Nevada citizens in violation or the rights set forth herein, rendering any judgment ineffectual.

73. NRS 33.010 provides that an injunction may be granted in cases: (1) when it shall appear by the complaint that plaintiff is entitled to the relief demanded, and that such relief or any part thereof consists in restraining the commission or continuance of the act complained of, either for a limited time or perpetually; (2) when it shall appear by the complaint that the commission or continuance of some act, during the litigation, would produce great or irreparable injury to the plaintiff; and/or (3) when it shall appear, during the litigation, that the defendant is doing or threatens some act in violating of the plaintiff's rights respecting the subject of the action, and tending to render the judgment ineffectual.

74. Therefore, the Court should grant a temporary restraining order, and ultimately preliminary and permanent injunctions, prohibiting further implementation and enforcement of the Emergency Regulation.

WHEREFORE, Plaintiffs request the following relief, and respectfully pray this Court to:

A. Assume jurisdiction over this action;

B. Issue a declaration that the Emergency Regulation:

1. Impermissibly interferes with and impairs the rights of Plaintiffs to practice medicine and the corresponding rights of Nevada patients;
2. Is invalid because exceeds the Defendants' statutory and regulatory authority;
3. Is invalid because it was adopted in violation of the Nevada Administrative Procedure Act;
4. Is void because it was adopted in violation of Nevada's Open Meeting Law;

5. Is invalid because it violates the Nevada Constitution;
6. Is invalid because it violates the United States Constitution; and
7. Is pre-empted by federal law.

C. Enter judgment against Defendants and in favor of Plaintiff on all claims asserted in this Complaint;

D. Grant a temporary restraining order, preliminary injunction, and/or permanent injunction restraining Defendants, their agents, employees, and successors in office or position from further implementing and enforcing the Emergency Regulation;

E. Award to Plaintiffs all attorney's fees and costs permitted under Nevada law; and,

F. Grant any other relief the Court deems just and proper.

AFFIRMATION

The undersigned does hereby affirm that this document does not contain the social security number of any person

DATED: April 21, 2020.

JOEY GILBERT LAW

By: */s Joseph S. Gilbert*
Joseph S. Gilbert, Esq.
Roger O'Donnell, Esq
Attorneys for Plaintiffs/Petitioners

LIST OF EXHIBITS

EXHIBIT NUMBER	DESCRIPTION	# of PAGES (incl. Cover Sheet)
1	March 11, 2020, Letter from CDC	5
2	Governor's Declaration of Emergency, March 12, 2020	4
3	Nevada State Board of Pharmacy, Declaration of Emergency, March 23, 2020	3
4	Nevada State Board of Pharmacy, Agenda, March 23, 2020	3
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