

1 **BEFORE THE CANNABIS COMPLIANCE BOARD**
2 **STATE OF NEVADA**

3
4 STATE OF NEVADA, CANNABIS
COMPLIANCE BOARD,

Case No. 2020-08

5 Petitioner,

6 vs.

7 FIDELIS HOLDINGS, LLC,

8 Respondent.
9

10 **COMPLAINT FOR DISCIPLINARY ACTION**

11 The Cannabis Compliance Board of the State of Nevada (the "CCB"), by and through
12 counsel, Aaron D. Ford, Attorney General of the State of Nevada, L. Kristopher Rath, Esq.,
13 Senior Deputy Attorney General, and Ashley A. Balducci, Esq., Senior Deputy Attorney
14 General, having a reasonable basis to believe that RESPONDENT FIDELIS HOLDINGS,
15 LLC ("Fidelis" or "Respondent") has violated provisions of Chapters 453A and 453D of the
16 Nevada Revised Statutes ("NRS") and Chapters 453A and 453D of the Nevada
17 Administrative Code ("NAC"), hereby issues its Complaint, stating the CCB's charges and
18 allegations as follows:

19 **JURISDICTION**

20 1. During all relevant times mentioned in this Complaint, Fidelis held, and
21 currently holds, the following certificates and licenses:

22 ID	License/Certificate	Last 23 Issued	Address
24 RC132	27870466259713738680 25 Recreational Cultivation	07/01/19	[REDACTED]
26 C132	40472676757320560321 27 Medical Cultivation	07/01/19	[REDACTED]

28 ¹ With a mailing address of: [REDACTED]

² With a mailing address of: [REDACTED]

1 2. During all relevant times mentioned in this Complaint, Fidelis is and was
2 registered as a limited-liability company in the State of Nevada. Chad Christensen and
3 Daniel Brasov are the managing members of Fidelis.

4 3. Laws 2019, c. 595, § 240, eff. July 1, 2020, states, in pertinent part, as follows:

5 1. The administrative regulations adopted by the Department of Taxation
6 pursuant to chapters 453A and 453D of NRS governing the licensing and
7 regulation of marijuana establishments and medical marijuana
8 establishments remain in force and are hereby transferred to become the
9 administrative regulations of the Cannabis Compliance Board on July 1, 2020.
10 On and after July 1, 2020, these regulations must be interpreted in a manner
11 so that all references to the Department of Taxation and its constituent parts
12 are read and interpreted as being references to the Cannabis Compliance
13 Board and its constituent parts, regardless of whether those references have
14 been conformed pursuant to section 244 of this act at the time of
15 interpretation...

16 3. Any action taken by the Department of Taxation or its constituent parts
17 pursuant to chapter 453A and 453D of NRS governing the licensing and
18 regulation of marijuana establishments and medical marijuana
19 establishments before July 1, 2020, remains in effect as if taken by the
20 Cannabis Compliance Board or its constituent parts on and after July 1, 2020.

21 4. Effective July 1, 2020 and pursuant to NRS 678A.350, the CCB superseded
22 the Marijuana Enforcement Division of the Department of Taxation (the "Department") in
23 enforcing Nevada's laws and regulations for the cannabis industry.

24 5. As set forth below, the events at issue in this Complaint occurred prior to July
25 1, 2020, when Fidelis was licensed pursuant to NRS Chapters 453A and 453D and NAC
26 Chapters 453A and 453D. Therefore, Fidelis is subject to the jurisdiction of the CCB and
27 subject to discipline pursuant to NRS 678A through 678D and the relevant provisions of
28 NRS Chapters 453A and 453D and NAC 453A and 453D. Violations are referenced herein
to the statutes and regulations in effect at the time each said violation occurred.

 6. Pursuant to NRS 678A.500 and 678A.510(1), the CCB's Executive Director
has transmitted the details of the suspected violations of Fidelis to the Attorney General
and the Attorney General has conducted an investigation of the suspected violations. The
Attorney General has recommended to the Executive Director that further proceedings are

1 warranted, as set forth in this Complaint. Pursuant to NRS 678A.510(2)(b), the CCB has
2 voted to proceed with appropriate disciplinary action under NRS 678A.520 through
3 678A.600, and has authorized service of this Complaint upon Respondent pursuant to NRS
4 678A.510(1).

5 **FACTUAL ALLEGATIONS**

6 7. CCB incorporates all prior Paragraphs as though fully set forth herein.

7 8. On or about March 7, 2019, staff from the prior regulatory agency, the
8 Department, met with a former employee of Fidelis, due to that employee's request for a
9 meeting to discuss compliance issues at the Fidelis facility. During that meeting, said
10 Fidelis employee advised Department staff that Fidelis had been using an ethylene oxide
11 machine ("ETO machine") to treat marijuana prior to testing for pests, despite the facts
12 that ethylene oxide is not an approved pesticide and the Department had explicitly
13 prohibited the use of ETO machines. Said Fidelis employee also relayed that the ETO
14 machine at the Fidelis facility was hidden inside a nondescript cardboard box to conceal it
15 from view.

16 9. During the meeting that occurred on or about March 7, 2019, said Fidelis
17 employee also informed Department staff that Fidelis was using a 420 Rad Source machine
18 ("radiation machine") to irradiate marijuana prior to testing for pests. This radiation
19 machine was being used without the required registration from the State of Nevada and
20 without advising the Department.

21 10. During the meeting that occurred on or about March 7, 2019, said Fidelis
22 employee also told Department staff that Fidelis management instructed Fidelis staff to
23 cover the ETO machine, if Department staff entered the Fidelis facility, and to guide
24 Department staff within the facility away from both the radiation and ETO machines.

25 11. Finally, said Fidelis employee advised Department staff that there were over
26 40 bags of marijuana without METRC tags located within a vault at the Fidelis facility and
27 that Fidelis routinely mixed different strains and combined harvest lots for the purpose of
28 manipulating the test results.

1 12. Based on the information provided, the Department initiated an investigation
2 of Fidelis commencing with an unannounced field visit of the Fidelis facility at [REDACTED]
3 [REDACTED], on or about March 12, 2019. At approximately 10:30 a.m. that
4 day, a team from the Department entered the Fidelis facility to investigate the allegations
5 made by the former employee. The lead Board Agent for this investigation was Damon
6 Hernandez.

7 13. On entering the facility, Department staff located Sean Characky, the
8 Facility/Operations Manager for Fidelis. Department staff advised Mr. Characky that the
9 Department was conducting an investigation of the facility. Department staff checked for
10 agent cards for those at the facility and found that employee Richard N. Hernandez did not
11 have his current agent card, or a temporary agent letter, in his immediate possession and
12 the facility did not have a copy on file. Employee William A. Blankevoort had a temporary
13 agent letter for a production facility, but did not have the one for a cultivation facility in
14 his immediate possession.

15 14. Shortly thereafter, Department staff located the radiation machine on the
16 first floor, in the southernmost portion of the facility. This machine was plugged in and
17 ready for use. Mr. Characky told Department staff that Fidelis used the radiation machine
18 to treat marijuana prior to laboratory testing to prevent a test failure for microbes.
19 Department staff asked Mr. Characky whether Fidelis had the required certificate from
20 the Nevada Department of Health and Human Services, Division of Public and Behavioral
21 Health ("DPH") for the radiation machine. Mr. Characky replied that they did and he would
22 provide a copy at a later time.

23 15. Department staff next asked Mr. Characky whether Fidelis used any other
24 equipment to treat marijuana prior to testing, such as an ETO machine. Mr. Characky
25 stated Fidelis was not currently using any such equipment, though had previously used an
26 ETO machine "a while ago" and there was currently no ETO machine on site.

27 16. Department staff proceeded to search for the ETO machine the former Fidelis
28 employee had referenced. Department staff found the ETO machine on the second floor of

1 the facility hidden under a nondescript cardboard box on a table with two other such boxes
2 on it. The machine was labeled "AN74I Anprolene Gas Sterilizer/Anderson Sterilizers,
3 Inc." The bottom and back side of the box containing the ETO machine had been cut out.
4 There was an exhaust tube exiting from the side of the ETO machine, which traveled
5 through the wall into the next room. That tube had been covered with a lab coat. The next
6 room on the other side of the wall was being used for trimming. The exhaust tube in that
7 trimming room was also concealed behind another box. From the trimming room, the
8 exhaust tube exited the building and released the exhaust directly to the outside air.

9 17. On examination of the ETO machine, Department staff found signs of use,
10 including dust on a filter and small pieces of marijuana inside the chamber used for
11 treating items. There was also a box of supplies for the machine, including ampules of
12 ethylene oxide.

13 18. While Department staff was examining the ETO machine, Mr. Characky
14 arrived and stated that the ETO machine was only being used to sterilize clothing and
15 equipment, not marijuana. When asked about the Department's Listserv notice stating
16 ETO machines could not be used on marijuana, Mr. Characky stated it was possible he had
17 received this. Department staff quarantined the ETO machine and advised Mr. Characky
18 it could not be used until further notice.

19 19. Department staff then met with multiple other Fidelis employees to discuss
20 use of the ETO machine and the radiation machine. One employee stated the ETO machine
21 was acquired about a year ago and was used once every two weeks; another employee said
22 it was used about once a week. After this, Mr. Characky stated the he had installed the
23 ETO machine and treated marijuana with it in three pound porous bags for 24 hours. With
24 respect to the radiation machine, Fidelis employees indicated it had been acquired two
25 months before and had been used to treat flower once a week; another employee stated it
26 had been used almost daily.

27 20. Department staff also found a logbook documenting use of the ETO machine.
28 This logbook indicated the ETO machine had been used to sterilize marijuana at least 27

1 times up to and including on March 9, 2019.

2 21. During the inspection on or about March 12, 2019, Department staff also
3 located untagged marijuana product on the first floor of the Fidelis facility. A Fidelis
4 employee advised that the facility would trim, measure and create lots on the second floor
5 and then transport the lots to the first floor to be weighed and receive METRC tags.
6 METRC tags did not accompany plants and products at all times, as required.

7 22. Department staff also inspected a room on the second floor with a door labeled
8 "Storage." Within that room, Department staff found 279 bags of untagged marijuana
9 product. Forty-eight (48) of these bags had multiple smaller bags of product within them.
10 Fidelis staff claimed they were unaware METRC tags had to stay with the product while it
11 was in the drying phase. Department staff began to weigh, photograph, and catalog all
12 untagged plants and product that day. This was completed the following day, on or about
13 March 13, 2019. There was a total of over 254 pounds of untagged marijuana. Department
14 staff quarantined all untagged marijuana at the Fidelis facility.

15 23. On or about March 14, 2019, Department staff contacted Mr. Characky to
16 obtain the DPH certificate for the radiation machine, as set forth in Paragraph 14, above.
17 Mr. Characky then emailed the certificate to the Department. On further investigation
18 thereafter, the Department learned from DPH that this certificate had been issued on
19 March 14, 2019. The application for this certificate had been submitted on March 13, 2019,
20 the day after the Department inspected the Fidelis facility.

21 VIOLATIONS OF LAW

22 24. CCB incorporates all prior Paragraphs as though fully set forth herein.

23 25. As to licenses RC132 and C132, Respondent Fidelis violated NAC
24 453D.905(3)(a)(3) by intentionally providing false information to the Department.
25 Specifically, a Fidelis employee and operations manager Sean Characky knowingly and
26 intentionally: (1) told Department staff that Fidelis did not have an ETO machine on site,
27 when he knew it did; (2) told Department staff that the ETO machine was not used on
28 marijuana, when he knew it was; and (3) told Department staff that the radiation machine

1 Fidelis was using had the required DPH certificate when he knew it did not. These three
2 acts constitute three Category I violations. The first violation carries a fine of \$35,000 and
3 a suspension of not more than 30 days; the two violations thereafter require revocation. In
4 the alternative, should the CCB find that Fidelis provided the foregoing false information
5 unintentionally, then Fidelis has violated NAC 453D.905(3)(b)(1) by making unintentional
6 false statements to the Department. If that is the case, these violations constitute three
7 Category II violations. The first Category II violation carries a \$10,000 fine and a
8 suspension of not more than 20 days. The second carries a \$20,000 fine and a license
9 suspension up to 30 days. The third Category II violation requires revocation.

10 26. As to licenses RC132 and C132, Respondent Fidelis violated NAC
11 453D.905(3)(a)(4) by intentionally concealing evidence. Specifically, Fidelis was aware that
12 Ethylene Oxide was an unapproved pesticide and that use of an ETO machine was
13 prohibited. Fidelis purposefully concealed its use of Ethylene Oxide and the ETO machine
14 by hiding the ETO machine under a cardboard box, hiding the exhaust tube under a lab
15 coat, and concealing the portion of the ETO machine exhaust tube in the adjacent trimming
16 room by also hiding that under a cardboard box. Fidelis further instructed its employees to
17 guide Department staff away from the ETO machine, should it inspect the Fidelis premises.
18 This is a Category I violation. As this is the fourth Category I violation, this violation
19 requires revocation.

20 27. As to licenses RC132 and C132, Respondent Fidelis violated NAC
21 453D.905(3)(a)(2) by operating without the required permits, licenses and certificates.
22 Specifically, Fidelis was using its 420 Rad Source machine without the required certificate
23 from DPH. This is a Category I violation. As this is the fifth Category I violation, this
24 violation requires revocation.

25 28. As to licenses RC132 and C132, Respondent Fidelis violated NAC
26 453D.905(3)(d)(4) and (5) by failing to follow seed-to-sale tracking requirements and failing
27 to tag all plants, as required. Specifically, Fidelis failed to maintain METRC tags on drying
28 plants and failed to include METRC tags on 279 bags of marijuana product, with a total

1 weight of over 254 pounds. This constitutes two Category III violations. The first violation
2 carries a \$2,500 fine and the second violation carries a \$5,000 fine or a license suspension
3 of up to 7 days.

4 29. As to licenses RC132 and C132, Respondent Fidelis violated NAC
5 453D.905(3)(d)(16) by using an unapproved pesticide. Specifically, Fidelis used Ethylene
6 Oxide, an unapproved pesticide, to treat marijuana at least 27 times. This constitutes 27
7 Category III violations. The first such violation carries a fine of \$10,000 or a license
8 suspension up to 20 days (third Category III violation). The second such violation carries a
9 license suspension up to 30 days (fourth Category III violation). The third and remaining
10 twenty-four violations require license revocation (fifth and subsequent Category III
11 violations).

12 30. As to licenses RC132 and C132, Respondent Fidelis violated NAC
13 453D.905(3)(e)(1) by allowing two employees to work at its facility without having valid
14 marijuana establishment agent registration cards in their immediate possession. This
15 constitutes two Category IV violations. The first such violation carries a fine of \$1,250. The
16 second such violation carries a fine of \$2,500 or license suspension of up to 7 days.

17 **DISCIPLINE AUTHORIZED**

18 Pursuant to the provisions of NRS 678A.600, NRS 453D.200, NAC 453A.332, NAC
19 453D.312, NAC 453D.405, NAC 453D.900, and NAC 453D.905, the CCB has the discretion
20 to impose the following disciplinary actions:

- 21 1. Revoke the licenses and certificates;
- 22 2. Suspend the licenses and certificates;
- 23 3. Impose a civil penalty of not more than \$35,000 for each separate violation of
24 Chapter 453D on the licenses and certificates;
- 25 4. Issue an order for the destruction of all untagged cannabis described in
26 Paragraphs 21 and 22, above; and
- 27 5. Take such other disciplinary action as the CCB deems appropriate.

28 The CCB may order one or any combination of the discipline described above.

1 **RELIEF REQUESTED**

2 Based on the foregoing, counsel for the CCB respectfully requests the CCB impose
3 the penalty of revocation against Fidelis's licenses, RC132 and C132. Pursuant to
4 NAC453D.940(8)(a) and NCCR 4.030(1)(b), counsel for the CCB respectfully requests a
5 determination from CCB that Fidelis be barred from applying for any cannabis
6 establishment license for 9 years and 11 months following the imposition of revocation of
7 licenses RC132 and C132.

8 In addition, counsel for the CCB requests the CCB impose civil penalties against
9 Fidelis in the amount of \$56,250³. Counsel for the CCB further requests the amount
10 expended for CCB's time and effort, pursuant to NAC 453A.352(4) and 453D.200(3), in the
11 amount of \$7,936.50 in costs to date. In sum, counsel for the CCB respectfully requests the
12 CCB order revocation of Fidelis's certificate/license and fines, penalties and costs in the
13 total amount of \$64,186.50. CCB reserves its rights to seek additional costs incurred as
14 this matter proceeds through hearing and rehearing, if applicable.

15 In addition, counsel for the CCB requests the CCB issue an order for the destruction
16 of all untagged cannabis described in Paragraphs 21 and 22, above. The CCB cannot
17 determine the origin of untagged cannabis or whether the untagged product has been
18 tested. Only properly tagged cannabis products can be transported by a cannabis
19 distributor. NAC 453D.870(2)(d). Cannabis and cannabis products outside the State
20 approved Seed to Sale Tracking System is subject to easy diversion for illegal sale and is in
21 violation of 453D.905(3)(d)(4), (5), (13), (14), and (19), DAC 453D.430 and NAC
22 453D.426(6)(a). Counsel for the CCB respectfully requests that said order of destruction
23 require Fidelis to provide CCB with a plan for destruction of the subject untagged cannabis
24 within 30 days of the order, which plan must include procedures for the proper destruction
25 of the untagged cannabis, including the date of the destruction, the videotaping of the
26 destruction, the witnessing by CCB staff of the destruction, and complete documentation
27 of the destruction.

28 _____
³ \$51,250 in the alternative, should the CCB find the violations in Paragraph 25 to be unintentional.

1 **NOTICE TO RESPONDENT**

2 **PLEASE TAKE NOTICE**, that Respondent has a right to request a hearing on the
3 charges set forth herein, pursuant to NRS 678A.510 through 678A.590. **Failure to**
4 **demand a hearing constitutes a waiver of the right to a hearing and to judicial**
5 **review of any decision or order of the Board, but the Board may order a hearing**
6 **even if the respondent so waives his or her right.** NRS 678A.520(2)(e).

7 **PLEASE TAKE NOTICE**, that Respondent must answer this Complaint
8 **within 20 days after service of this Complaint**, unless granted an extension. Pursuant
9 to NRS 678A.520(2), in the answer Respondent:

- 10 (a) Must state in short and plain terms the defenses to each claim asserted.
11 (b) Must admit or deny the facts alleged in the complaint.
12 (c) Must state which allegations the respondent is without knowledge or information
13 form a belief as to their truth. Such allegations shall be deemed denied.
14 (d) Must affirmatively set forth any matter which constitutes an avoidance or
15 affirmative defense.
16 (e) May demand a hearing. **Failure to demand a hearing constitutes a waiver**
17 **of the right to a hearing and to judicial review of any decision or order of**
18 **the Board**, but the Board may order a hearing even if the respondent so waives his
19 or her right.

20 **Failure to answer or to appear at the hearing constitutes an admission by**
21 **the respondent of all facts alleged in the Complaint. The Board may take action**
22 **based on such an admission and on other evidence without further notice to the**
23 **respondent.** NRS 678A.520(3).

24 The Board shall determine the time and place of the hearing as soon as is reasonably
25 practical after receiving the respondent's answer. The Board shall deliver or send by
26 registered or certified mail a notice of hearing to all parties at least 10 days before the
27 hearing. The hearing must be held within 45 days after receiving the respondent's answer
28

1 unless an expedited hearing is determined to be appropriate by the Board, in which event
2 the hearing must be held as soon as practicable. NRS 678A.520(4).

3 Respondent's Answer and Request for Hearing must be either: mailed via registered
4 mail, return receipt; or delivered in person; or emailed to:

5 Tyler Klimas, Executive Director
6 Cannabis Compliance Board
7 555 E. Washington Avenue, Suite 4100
8 Las Vegas, Nevada 89101
9 tklimas@ccb.nv.gov

10 If served by email, Respondent must ensure that it receives an acknowledgement of receipt
11 email from CCB as proof of service.

12 As RESPONDENT, you are specifically informed that you have the right to appear
13 and be heard in your defense, either personally or through your counsel of choice at your
14 own expense. At the hearing, the CCB has the burden of proving the allegations in the
15 Complaint, although any failure on your part to maintain any documents, records,
16 surveillance video, and/or any other items required pursuant to the relevant statutes and
17 regulations shall create a rebuttal presumption that such items would be harmful to your
18 case. The CCB will call witnesses and present evidence against you. You have the right to
19 respond and to present relevant evidence and argument on all issues involved. You have
20 the right to call and examine witnesses, introduce exhibits, and cross-examine opposing
21 witnesses on any matter relevant to the issues involved.

22 You have the right to request that the CCB issue subpoenas to compel witnesses to
23 testify and/or evidence to be offered on your behalf. In making this request, you may be
24 required to demonstrate the relevance of the witness's testimony and/or evidence.

25 If Respondent does not wish to dispute the charges and allegations set forth herein,
26 within 30 days of the service of this Complaint, Respondent may pay the civil penalties and
27 costs set forth above in the total amount of \$64,186.50 and surrender licenses RC132 and
28 C132 to:

29 Tyler Klimas, Executive Director
30 Cannabis Compliance Board
31 555 E. Washington Avenue, Suite 4100
32 Las Vegas, Nevada 89101

1 YOU ARE HEREBY ORDERED to immediately cease the activity described above
2 which is a violation of Nevada law.

3 DATED: August 25, 2020.

4 STATE OF NEVADA

5
6 By: 

7 Tyler Klimas, Executive Director
8 555 E. Washington Avenue, Suite 4100
9 Las Vegas, Nevada 89101
10 (702) 486-2300

11 AARON D. FORD
12 Attorney General

13 By: 

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