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

4 STATE OF NEVADA, CANNABIS
5 COMPLIANCE BOARD,

6 Petitioner,

7 vs.

8 SEAN CHARACKY,

9 Respondent.
10

Case No. 2020-09

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12 **STIPULATION AND ORDER FOR SETTLEMENT OF DISCIPLINARY ACTION**

13 The Cannabis Compliance Board (the "CCB"), by and through its counsel, Aaron D.
14 Ford, Attorney General for the State of Nevada, L. Kristopher Rath, Esq., Senior Deputy
15 Attorney General and Ashley A. Balducci, Esq., Senior Deputy Attorney General, hereby
16 enters into this Stipulation and Order for Settlement of Disciplinary Action ("Stipulation and
17 Order") with Respondent Sean Characky (hereinafter "Characky"), by and through his counsel
18 of record, Crane M. Pomerantz, Esq. of the law firm of Sklar Williams, PLLC. Pursuant to this
19 Stipulation and Order, Characky and CCB (collectively, the "Parties") hereby stipulate and
20 agree that CCB Case No. 2020-09 (the "Administrative Action") shall be fully and finally
21 settled and resolved upon terms and conditions set out herein.

22 **PERTINENT FACTS**

23 1. On August 25, 2020, CCB initiated this disciplinary action via the service and
24 filing of a Complaint for Disciplinary Action (the "Complaint"). The Complaint alleges, *inter*
25 *alia*, that, contrary to Nevada law, in his capacity as a cannabis establishment agent Characky
26 intentionally, or in the alternative, unintentionally, provided false information to agents of the
27 Department of Taxation, Marijuana Enforcement Division (the "Department"), intentionally
28 concealed evidence from the Department, and allowed Fidelis Holdings, LLC ("Fidelis"), the
cannabis establishment with which he was employed, to operate without required permits.

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2 2. Characky filed his Answer to the Complaint, and demand for a hearing, on
3 October 2, 2020. Respondent Characky's Answer generally denied the allegations in the
4 Complaint and set forth various defenses to the allegations in the Complaint. The Parties
5 then commenced the disciplinary process under NRS 678A.

6 3. During the time the parties were engaged in the disciplinary process, the Parties
7 engaged in good faith negotiations to reach an agreement that is mutually acceptable to
8 Respondent and counsel for the CCB for resolution of this matter, with the understanding that
9 this Stipulation and Order must be approved by majority vote of the members of the CCB.
10 Accordingly, the parties entered into an agreement to stay the disciplinary process to allow the
11 CCB to consider this Stipulation and Order for approval.

12 **ACKNOWLEDGEMENTS AND APPLICABLE LAW**

13 This Stipulation and Order is made and based upon the following acknowledgements
14 by the Parties:

15 4. Characky has entered into this Stipulation and Order on his own behalf and with
16 full authority to resolve the claims against him and is aware of his rights to contest the
17 violations pending against him. These rights include representation by an attorney at
18 Characky's own expense, the right to a hearing on any violations or allegations formally filed,
19 the right to confront and cross-examine witnesses called to testify against Characky, the right
20 to present evidence on Characky's own behalf, the right to have witnesses testify on
21 Characky's behalf, the right to obtain any other type of formal judicial review of this matter,
22 and any other rights which may be accorded to Characky pursuant to provisions of NRS
23 Chapters 678A through 678D, NRS Chapters 453A and 453D, NAC Chapters 453A and
24 453D, the Nevada Cannabis Compliance Regulations (NCCR), and any other provisions of
25 Nevada law. Characky is waiving all these rights by entering into this Stipulation and Order. If
26 the CCB rejects this Stipulation and Order, or any portion thereof, Characky reserves the right
27 to withdraw any or all such waivers.

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 5. Should this Stipulation and Order be rejected by the CCB or not timely

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2 performed by Characky, it is agreed that presentation to and consideration by the CCB of
3 such proposed stipulation or other documents or matters pertaining to the consideration of this
4 Stipulation and Order shall not unfairly or illegally prejudice the CCB or any of its members
5 from further participation, consideration, adjudication, and/or resolution of these proceedings
6 and that no CCB member shall be disqualified or challenged for bias.

7 6. Characky acknowledges that this Stipulation and Order shall only become
8 effective after the CCB has approved it.

9 7. Characky enters this Stipulation and Order after being fully advised of his rights
10 and as to the consequences of this Stipulation and Order. This Stipulation and Order
11 embodies the entire agreement reached between the CCB and Characky. It may not be
12 altered, amended, or modified without the express written consent of the Parties and all
13 alterations, amendments and/or modifications must be in writing.

14 8. In an effort to avoid the cost and uncertainty of a disciplinary hearing, Characky
15 has agreed to settle this matter. For purposes of settling this matter, Characky acknowledges
16 that the facts contained in the paragraphs in the above "Pertinent Facts" portion of this
17 Stipulation and Order are true and correct. Without waiving any constitutional rights against
18 self-incrimination, Characky further acknowledges that certain facts contained in the CCB
19 Complaint in Case No. 2020-09 could be found to constitute violations of NRS Chapters 453A
20 and 453D and NAC Chapters 453A and 453D, with penalties up to and including revocation,
21 suspension, and/or a civil penalty and costs of \$35,000 or more, if this matter went to an
22 administrative hearing.

23 9. In settling this matter the Executive Director for CCB and counsel for CCB have
24 considered the factors set forth in NCCR 4.030(2) and NAC 453D.905(2), including: the
25 gravity of the violations; the economic benefit or savings, if any, resulting from the violations;
26 the size of the business of the violator; the history of compliance with the Nevada statutes and
27 regulations governing marijuana/cannabis by the violator; actions taken to remedy and/or
28 correct the violations; and the effect of the penalty on the ability of the violator to continue in
business.

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2 10. To resolve the Administrative Action, and only for those purposes and no other,
3 Characky specifically admits to the following violations with respect to the Complaint in CCB
4 Case No. 2020-09 for his current and former cannabis establishment agent registration cards:

5 Two violations of NAC 453D.905(3)(b)(3), for unintentionally concealing evidence,
6 which constitutes two Category II violations.

7 11. As to the remaining allegations in the Complaint, Characky neither admits nor
8 denies those allegations and no civil penalties or other discipline shall be assessed as to the
9 remaining violations.

10 12. Characky further agrees to pay a civil penalty in the amount of \$100,000,
11 inclusive of time and effort costs, in consideration for his admitted violations in Paragraph 10,
12 above, and in consideration of CCB's agreement to resolve the Administrative Action on the
13 terms set forth herein. Said sum must be paid within 30 days of CCB approval of this
14 Stipulation and Order.

15 13. Characky further agrees to a suspension of his cannabis establishment agent
16 registration cards for 35 calendar days, in consideration for his admitted violations in
17 Paragraph 10, above, and in consideration of CCB's agreement to resolve the Administrative
18 Action on the terms set forth herein. Should the CCB approve this Stipulation and Order at its
19 meeting on May 25, 2021, meeting, said suspension shall commence at 8:00 a.m., Pacific
20 Time, on May 26, 2021, and end at 8:00 a.m., Pacific Time, on June 30, 2021. Should CCB
21 approve this Stipulation and Order at any other time, the Parties shall meet and confer and
22 agree upon a different and specific 35 day time period for the suspension, subject to approval
23 of the CCB's Executive Director.

24 14. If the CCB approves this Stipulation and Order, it shall be deemed and
25 considered disciplinary action by the CCB against Characky.

26 15. Both parties acknowledge that the CCB has jurisdiction to consider and order
27 this Stipulation and Order because Characky holds privileged cannabis establishment agent
28 registration cards regulated by the CCB as of July 1, 2020. Characky expressly, knowingly,
and intentionally waives the 21-day and/or 5 day notice requirements contained in the Nevada

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2 Open Meeting Law and acknowledges that this Stipulation and Order may be presented to the
3 CCB for its consideration and potential ratification at the CCB's meeting on May 25, 2021.

4 **STIPULATED ADJUDICATION**

5 Based upon the above acknowledgments of the Parties and their mutual agreement,
6 the Parties stipulate and agree that the following terms of discipline shall be imposed by the
7 CCB in this matter:

8 16. Violations: As to his current and former cannabis/marijuana establishment agent
9 registration cards, Characky is found to have committed two Category II violations, as set forth
10 in Paragraph 10, above.

11 17. Imposition and Payment of Civil Penalties. Characky shall pay a total civil
12 penalty, inclusive of time and effort costs, in the amount of one hundred thousand dollars
13 (\$100,000) within 30 days of the date the CCB approves this Stipulation and Order.

14 18. Suspension. Characky shall serve a suspension term of 35 days, as set forth in
15 Paragraph 13, above. During this 35 day suspension period, Characky shall not conduct any
16 work, and/or take any remuneration, as a cannabis establishment registered agent at any
17 cannabis establishment. During this 35 day suspension period, Characky shall not be
18 physically present within any cannabis establishment, whether as a worker, volunteer, and/or
19 customer. Violation of any of the terms of this suspension, and/or violation of any other terms
20 of this agreement, shall subject Characky to further disciplinary action by CCB.

21 19. Potential Future Action Against Characky. The Parties agree that, pursuant to
22 the specific facts of this case and the resolution reached in this Stipulation and Order, the
23 progressive disciplinary provisions of NAC 453D.905(4)(b) of two years shall apply to the
24 disciplinary actions herein. Any subsequent Category II violations within said two-year
25 period would invoke the progressive disciplinary provisions of NAC 453D.905(4)(b). The CCB
26 contends that said two-year period shall commence on the date the CCB approves this
27 agreement. Characky contends that said two-year period shall commence as of the date of
28 the alleged violations on March 19, 2019. The parties agree that this issue shall be deferred
for resolution until there is disciplinary action within the two-year disputed time frame. If there

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2 is no disciplinary action against Characky within two years after the CCB approves this
3 Stipulation and Order, the Parties agree this issue shall be moot. If there is such disciplinary
4 action within that two years, Characky reserves the right to raise the expiration of the two-year
5 disciplinary time period as an affirmative defense in any subsequent disciplinary action and
6 the issue shall be adjudicated in that later administrative action, pursuant to NRS Title 56 and
7 the NCCR, which will be subject to judicial review when final. Regardless, after said two-year
8 period expires, the CCB may still consider the compliance history of Characky under NCCR
9 4.030(2). In addition to the factors listed for consideration in NCCR 4.030(2), in any future
10 disciplinary action involving the cannabis establishment agent registration cards of Characky,
11 CCB will also take into account and consider the fact that Characky has cooperated in and
12 negotiated in good faith in the resolution of CCB Case No. 2020-09.

13 20. Plan of Correction. Respondent represents and warrants that a plan of
14 correction has been put in place to remedy and to prevent the recurrence of the violations set
15 forth in this Stipulation and Order. Respondent further represents and warrants that he is
16 now, as of the date he has executed this Stipulation and Order, working in full compliance with
17 NRS Title 56 and NCCR. Characky warrants that he will fully comply with the provisions his
18 employer, Fidelis, has added to its Employment Manual requiring its staff to be truthful and
19 transparent with CCB staff and other regulatory agencies and to refer such regulatory agents
20 to the appropriate department manager for inquiry when appropriate¹. Characky will also fully
21 comply with Fidelis's revised Standard Operating Procedure on remediation devices to ensure
22 proper approval by CCB and other Nevada government agencies as necessary prior to use of
23 such equipment.²

24 21. Contingency if Approval Denied. If approval of this Stipulation and Order is
25 denied by CCB, Characky and counsel for the CCB agree to resume settlement negotiations
26 in good faith and attempt to reach an agreement to amend this Stipulation and Order and
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28 ¹ See Paragraph 20 of Stipulation and Order for Settlement of Disciplinary Action of January 26, 2021, for Fidelis Holdings, LLC, in CCB Case No. 2020-08.

² See Paragraph 20 of Stipulation and Order for Settlement of Disciplinary Action of January 26, 2021, for Fidelis Holdings, LLC, in CCB Case No. 2020-08.

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2 resubmit an amended Stipulation and Order to the CCB to review for approval at its next
3 regularly scheduled meeting. If such an agreement cannot be reached, the Parties agree to
4 proceed with the Administrative Action, which shall include a disciplinary hearing before the
5 CCB or its assigned hearing officer. Should the Administrative Action proceed for the reasons
6 set forth in this Paragraph, CCB preserves all its claims and arguments in the Administrative
7 Action as set forth in its Complaint and Characky preserves all its defenses and arguments
8 set forth in his Answer. An unapproved Stipulation and Order shall not be admissible as
9 evidence or referenced in argument, by any party, at any disciplinary hearing in CCB Case
10 No. 2020-09 or any other matter involving the CCB.

11 22. Contingency if Approval Conditioned. If the CCB approves this Stipulation and
12 Order, but said approval is contingent on certain conditions, the parties will undertake further
13 good faith negotiations and attempt to reach an agreement to amend this Stipulation and
14 Order and resubmit an amended Stipulation and Order to the CCB to review for approval at its
15 next regularly scheduled meeting. If such an agreement cannot be reached, the Parties agree
16 to proceed with the Administrative Action, which shall include a disciplinary hearing before the
17 CCB or its assigned hearing officer. Should the Administrative Action proceed for the reasons
18 set forth in this Paragraph, CCB preserves all its claims and arguments in the Administrative
19 Action as set forth in its Complaint and Characky preserves all its defenses and arguments
20 asserted in his Answer. An unapproved Stipulation and Order shall not be admissible as
21 evidence or referenced in argument at any disciplinary hearing in CCB Case No. 2020-09 or
22 any other matter involving the CCB.

23 23. Closure of Disciplinary Action. Once this Stipulation and Order is fully
24 performed by Characky, the Administrative Action will be closed.

25 24. Communications with CCB Members. Characky understands that this
26 Stipulation and Order will be presented to the CCB in open session at a duly noticed and
27 scheduled CCB meeting. Characky understands that the CCB has the right to decide in its
28 own discretion whether or not to approve this Stipulation and Order. The CCB's counsel,
which is the Nevada Attorney General and its staff attorneys, will recommend approval of this

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2 Stipulation and Order. In the course of seeking CCB acceptance of this Stipulation and Order,
3 counsel for CCB may communicate directly with individual CCB members. Characky
4 acknowledges that such communications may be made or conducted *ex parte*, without notice
5 or opportunity for Characky to be heard on its part until the public CCB meeting where this
6 Stipulation and Order is discussed, and that such contacts and communications may include,
7 but may not be limited to, matters concerning this Stipulation and Order, the Administrative
8 Action and any and all information of every nature whatsoever related to these matters.
9 Characky agrees that he has no objections to such *ex parte* communications. CCB agrees
10 that Characky and/or its counsel may appear at the CCB meeting where this Stipulation and
11 Order is discussed and, if requested, respond to any questions that may be addressed to
12 Characky and/or the Attorney General's staff attorneys. Characky agrees that, should the
13 CCB decline to approve this Stipulation and Order, Characky will not contest or otherwise
14 object to any CCB member, and/or CCB appointed hearing officer, hearing and adjudicating
15 the Administrative Action based on the aforementioned *ex parte* communications with anyone
16 from the Nevada Attorney General's Office.

17 25. Release. In execution of this agreement, Respondent agrees that the State of
18 Nevada, the CCB, the Office of the Attorney General, and each of their members, staff,
19 attorneys, investigators, experts, hearing officers, consultants and agents are, upon
20 acceptance of this agreement, immune from any liability for any decision or action taken in
21 good faith in response to information and data acquired by the CCB. Respondent agrees to
22 release the State of Nevada, the CCB, the Office of the Attorney General, and each of their
23 members, staff, attorneys, investigators, experts, hearing officers, consultants and agents
24 from any and all manner of actions, causes of action, suits, debts, judgments, executions,
25 claims and demands whatsoever, known or unknown, in law or equity, that Respondent ever
26 had, now has, may have or claim to have against any and/or all of the persons, government
27 agencies or entities named and/or described in this Paragraph, arising out of, or by reason of,
28 CCB's investigation of the matters set forth in its Complaint, the matters set forth in this
Stipulation and Order, or the administration of CCB Case No. 2020-09.

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2 26. No Precedence. The Parties agree that this Stipulation and Order shall not
3 constitute a precedent for any other issues or proceedings before the CCB and/or in any other
4 forum, other than those set forth in this Stipulation and Order. Furthermore, this Stipulation
5 and Order shall not be admissible in any other proceeding or action with respect to proof of
6 fact or any other matter and/or any other licensee and/or cannabis establishment registered
7 agent, except proceedings brought to enforce this Stipulation and Order under its terms
8 and/or for the CCB's consideration of future disciplinary action against this Respondent.

9 The CCB may consider the discipline imposed herein in any future disciplinary action
10 against Respondent, as required under NCCR 4.030(2), along with the other factors set forth
11 in NCCR 4.030(2), and possible progressive discipline pursuant to NCCR 4.035 through
12 4.060. As every case concerns different facts and details, this Stipulation does not act as
13 precedence to bind CCB to impose any particular penalty, to charge or allege any particular
14 violation, and/or to impose any particular disciplinary action in the future for this Respondent,
15 or any other respondent, for violations of the same statutes and/or regulations addressed in
16 this Stipulation and Order. Likewise, CCB is not bound by any previous settlement
17 agreements it has approved in entering into this Stipulation and Order.

18 27. Attorneys' Fees and Costs. The Parties each agree to bear their own attorneys'
19 fees and costs.

20 28. Further Assurances. The Parties shall cooperate in executing such additional
21 documents and performing such further acts as may be reasonably necessary to give effect to
22 the purposes and provisions of this Stipulation and Order.

23 29. Voluntary and Informed Agreement. The Respondent represents that he has
24 read completely and understands fully the terms of this Stipulation and Order, that such terms
25 are fully understood and voluntarily accepted by Respondent in advance of and as
26 memorialized by the signing of this Stipulation and Order, and that the Respondent's
27 signature to this Stipulation and Order indicates same. Respondent further represents that he
28 has voluntarily entered into this Stipulation and Order to make a full, final, and complete
compromise upon the terms and conditions set forth herein. Respondent further represents

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2 that any releases, waivers, discharges, covenants, and agreements provided for in this
3 Stipulation and Order have been knowingly and voluntarily granted and without any duress or
4 undue influence of any nature from any person or entity. The Parties, and each of them,
5 hereby expressly acknowledge that they are each represented by counsel of their own choice
6 in this matter and have been advised by counsel accordingly.

7 30. Warranties of Authority. The Parties to this Stipulation and Order, and each of
8 them, expressly warrant and represent to all other Parties that each has the full right, title, and
9 authority to enter into and to carry out its obligations hereunder, with the sole exception of the
10 required approval of this Stipulation and Order by the CCB. The Parties also expressly
11 acknowledge the foregoing authority.

12 31. Binding Effect. This Stipulation and Order shall be binding upon and inure to the
13 benefit of the Parties hereto and the Parties' respective successors, predecessors, parents,
14 affiliates, shareholders, employees, heirs, executors, assigns, and administrators.

15 32. Construction. The headings of all Sections and Paragraphs of this Stipulation
16 and Order are inserted solely for the convenience of reference and are not a part of the
17 Stipulation and Order and are not intended to govern, limit, or aid in the construction or
18 interpretation of any term or provision of this Stipulation and Order. In the event of a conflict
19 between such caption and the paragraph at the head of which it appears, the paragraph and
20 not such caption shall govern in the construction of this Stipulation and Order.

21 33. Governing Law. This Stipulation and Order shall be governed by and construed
22 in accordance with the laws of the State of Nevada, without reference to conflict of law
23 principles.

24 34. Jurisdiction and Forum Selection. The Parties consent to the jurisdiction of the
25 Eighth Judicial District Court of the State of Nevada, in and for Clark County, to resolve any
26 disputes related to the terms or enforcement of this Stipulation and Order. The successful or
27 prevailing Party or Parties in such action shall be entitled to recover reasonable attorney fees,
28 costs, and expenses actually incurred in initiating or responding to such proceeding, in
addition to any other relief to which it may be entitled.

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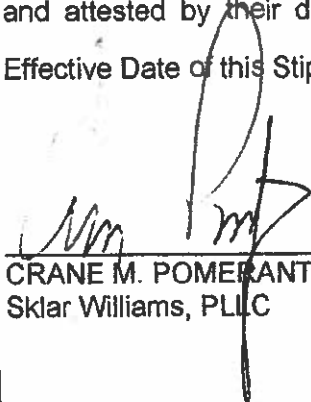
35. Interpretation. This Stipulation and Order is the result of negotiations among the Parties who have each negotiated and reviewed its terms. In the event a Court ever construes this Agreement, the Parties expressly agree, consent, and assent that such Court shall not construe this Agreement or any provision hereof against any Party as its drafter for purposes of interpreting any ambiguity or uncertainty in this Stipulation and Order.

36. Time is of the Essence. Time is of the essence in the performance of all terms of this Stipulation and Order.

37. Severability. If any portion of this Stipulation and Order, or its application thereof to any person or circumstance, shall be deemed to any extent to be invalid, illegal, or unenforceable as a matter of law, all remaining clauses of this Stipulation and Order and its application thereof shall be not affected and shall remain enforceable to the fullest extent permitted by law.

38. Counterparts and Copies. This Stipulation and Order may be executed in counterparts, each of which when so executed and upon delivery to counsel of record for the Parties shall be deemed an original ("Counterparts"). This Stipulation and Order shall be deemed executed when Counterparts of this Stipulation and Order have been executed by all the Parties and/or their counsel; such Counterparts taken together shall be deemed to be the Agreement. This Stipulation and Order may be executed by signatures provided by electronic facsimile or email, which signatures shall be binding and effective as original wet ink signatures hereupon. All fully executed copies of this Stipulation and Order are duplicate originals, equally admissible in evidence.

IN WITNESS WHEREOF, this Stipulation and Order has been executed by the Parties and attested by their duly authorized representatives as of the date(s) so indicated. The Effective Date of this Stipulation and Order shall be the date it is ordered by the CCB.

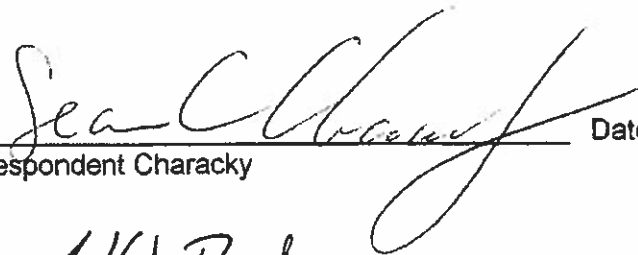


CRANE M. POMERANTZ (Bar No. 14103)
Sklar Williams, PLLC

Date: 5/12/21


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Counsel for Respondent Characky



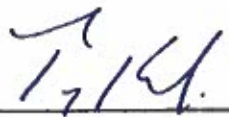
Date: 05/11/2021

Respondent Characky



Date: 5/12/2021

L. Kristopher Rath (Nev. Bar No. 5749)
Ashley Balducci (Nev. Bar No. 12687)
Senior Deputy Attorney General
Counsel for Cannabis Compliance Board



Date: 5/17/2021

Tyler Klimas, Executive Director for the
Cannabis Compliance Board

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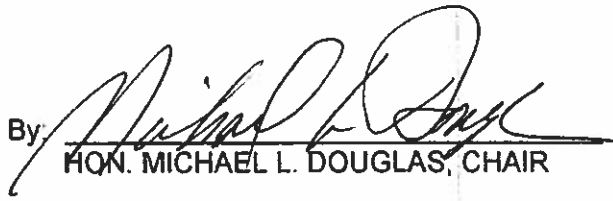
ORDER

WHEREAS, on 25th day of May, 2021, the Nevada Cannabis Compliance Board approved and adopted all the terms and conditions set forth in the Stipulation and Order for Settlement of Disciplinary Action with Characky.

IT IS SO ORDERED.

SIGNED AND EFFECTIVE this 25th day of May, 2021.

STATE OF NEVADA,
CANNABIS COMPLIANCE BOARD

By: 
HON. MICHAEL L. DOUGLAS, CHAIR