

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

3
4 STATE OF NEVADA, CANNABIS
COMPLIANCE BOARD,

Case No. 2020-09

5 Petitioner,

6
7 vs.

8 SEAN CHARACKY,

9 Respondent.

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 SEAN CHARACKY
15 ("Characky" 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. Characky currently holds the following three cannabis establishment agent
21 registration cards: C777 1900027650 (Cultivation); P777 1900027654 (Production); and
22 D777 1900027656 (Dispensary). The three aforementioned cannabis establishment agent
23 registration cards in this Paragraph shall hereinafter be referred to as the "Current Agent
24 Cards". The Current Agent Cards all have an expiration dates of February 25, 2021.

25 ...

26 ...

27 ...

1 2. Characky previously held the following thirteen cannabis establishment
2 agent registration cards:

Code	Number	Establishment/ Category	Role	Application Date	Expiration Date
D159	1708010726	Fidelis Holdings, LLC	Employee	5/20/2016	6/19/2017
C132	1708010734	Fidelis Holdings, LLC	Employee	11/30/2015	1/20/2017
C133	1708014989	Fidelis Holdings, LLC	Employee	5/20/2016	5/31/2017
C132	1708021627	Fidelis Holdings, LLC	Employee	3/9/2017	3/9/2018
P081	1708022923	Fidelis Holdings Henderson, LLC	Employee	4/25/2017	9/24/2018
C133	1708022969	Fidelis Holdings, LLC	Employee	4/25/2017	1/1/2017
D777	1708028216	Dispensary	Employee	10/09/2017	10/8/2018
P777	180000193	Production	Employee	1/29/18	1/28/19
C777	180004652	Cultivation	Employee	6/14/18	7/1/19
D159	180008267	Fidelis Holdings, LLC	Prospective Board Member	9/24/18	9/23/19
D777	190007641	Dispensary	Employee	3/6/19	3/5/20
C777	190007642	Cultivation	Employee	3/6/19	3/5/20
P777	190007643	Production	Employee	3/6/19	3/5/20

17
18 The thirteen aforementioned cannabis establishment agent registration cards in
19 this Paragraph shall hereinafter be referred to as the "Prior Agent Cards".

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

21
22 1. The administrative regulations adopted by the Department of Taxation
23 pursuant to chapters 453A and 453D of NRS governing the licensing and
24 regulation of marijuana establishments and medical marijuana
25 establishments remain in force and are hereby transferred to become the
26 administrative regulations of the Cannabis Compliance Board on July 1, 2020.
27 On and after July 1, 2020, these regulations must be interpreted in a manner
28 so that all references to the Department of Taxation and its constituent parts
are read and interpreted as being references to the Cannabis Compliance
Board and its constituent parts, regardless of whether those references have
been conformed pursuant to section 244 of this act at the time of
interpretation...

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

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

9 5. As set forth below, the events at issue in this Complaint occurred prior to July
10 1, 2020, when Characky held the following cannabis establishment agent cards¹ pursuant
11 to NRS Chapters 453A and 453D and NAC Chapters 453A and 453D: P777 180000193;
12 C777 180004652; and D159 180008267. Therefore, Characky is subject to the jurisdiction
13 of the CCB and subject to discipline pursuant to NRS 678A through 678D and the relevant
14 provisions of NRS Chapters 453A and 453D and NAC 453A and 453D. Violations are
15 referenced herein to the statutes and regulations in effect at the time each said violation
16 occurred.

17 6. Pursuant to NRS 678A.500 and 678A.510(1), the CCB's Executive Director
18 has transmitted the details of the suspected violations of Characky to the Attorney General
19 and the Attorney General has conducted an investigation of the suspected violations. The
20 Attorney General has recommended to the Executive Director that further proceedings are
21 warranted, as set forth in this Complaint. Pursuant to NRS 678A.510(2)(b), the CCB has
22 voted to proceed with appropriate disciplinary action under NRS 678A.520 through
23 678A.600, and has authorized service of this Complaint upon Respondent pursuant to NRS
24 678A.510(1).

25 **FACTUAL ALLEGATIONS**

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

27 8. On or about March 7, 2019, staff from the prior regulatory agency, the
28 Department, met with a former employee of licensee Fidelis Holdings, LLC ("Fidelis"), due

¹ Prior to July 1, 2020, cannabis establishment agent registration cards were known as marijuana establishment agent registration cards.

1 to that employee's request for a meeting to discuss compliance issues at the Fidelis facility.
2 During that meeting, said Fidelis employee advised Department staff that Fidelis had been
3 using an ethylene oxide machine ("ETO machine") to treat marijuana prior to testing for
4 pests, despite the facts that ethylene oxide is not an approved pesticide and the Department
5 had explicitly prohibited the use of ETO machines. Said Fidelis employee also relayed that
6 the ETO machine at the Fidelis facility was hidden inside a nondescript cardboard box to
7 conceal it from view.

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

13 10. During the meeting that occurred on or about March 7, 2019, said Fidelis
14 employee also told Department staff that Fidelis management instructed Fidelis staff to
15 guide Department staff within the facility away from both the radiation and ETO
16 machines.

17 11. Based on information provided by the former employee of Fidelis, the
18 Department initiated an investigation of Fidelis commencing with an unannounced field
19 visit of the Fidelis facility at [REDACTED], on or about March
20 12, 2019. At approximately 10:30 a.m. that day, a team from the Department entered the
21 Fidelis facility to investigate the allegations made by the former employee. The lead Board
22 Agent for this investigation was Damon Hernandez.

23 12. On entering the facility, Department staff located Characky, the
24 Facility/Operations Manager for Fidelis at the time. Department staff advised Characky
25 that the Department was conducting an investigation of the facility.

26 13. Shortly thereafter, Department staff located the radiation machine on the
27 first floor, in the southernmost portion of the facility. This machine was plugged in and
28 ready for use. Characky told Department staff that Fidelis used the radiation machine to

1 treat marijuana prior to laboratory testing to prevent a test failure for microbes.
2 Department staff asked Characky whether Fidelis had the required certificate from the
3 Nevada Department of Health and Human Services, Division of Public and Behavioral
4 Health ("DPH") for the radiation machine. Characky replied that they did and he would
5 provide a copy at a later time.

6 14. Department staff next asked Characky whether Fidelis used any other
7 equipment to treat marijuana prior to testing, such as an ETO machine. Characky stated
8 Fidelis was not currently using any such equipment, though had previously used an ETO
9 machine "a while ago" and there was currently no ETO machine on site.

10 15. Department staff proceeded to search for the ETO machine the former Fidelis
11 employee had referenced. Department staff found the ETO machine on the second floor of
12 the facility hidden under a nondescript cardboard box on a table with two other such boxes
13 on it. The machine was labeled "AN74I Anprolene Gas Sterilizer/Anderson Sterilizers,
14 Inc." The bottom and back side of the box containing the ETO machine had been cut out.
15 There was an exhaust tube exiting from the side of the ETO machine, which traveled
16 through the wall into the next room. That tube had been covered with a lab coat. The next
17 room on the other side of the wall was being used for trimming. The exhaust tube in that
18 trimming room was also concealed behind another box. From the trimming room, the
19 exhaust tube exited the building and released the exhaust directly to the outside air.

20 16. On examination of the ETO machine, Department staff found signs of use,
21 including dust on a filter and small pieces of marijuana inside the chamber used for
22 treating items. There was also a box of supplies for the machine, including ampules of
23 ethylene oxide.

24 17. While Department staff was examining the ETO machine, Characky arrived
25 and stated that the ETO machine was only being used to sterilize clothing and equipment,
26 not marijuana. When asked about the Department's Listserv notice stating ETO machines
27 could not be used on marijuana, Characky stated it was possible he had received this.
28 Department staff quarantined the ETO machine and advised Characky it could not be used

1 until further notice.

2 18. Department staff then met with multiple other Fidelis employees to discuss
3 use of the ETO machine and the radiation machine. One employee stated the ETO machine
4 was acquired about a year ago and was used once every two weeks; another employee said
5 it was used about once a week. After this, Characky stated the he had installed the ETO
6 machine and treated marijuana with it in three pound porous bags for 24 hours. With
7 respect to the radiation machine, Fidelis employees indicated it had been acquired two
8 months before and had been used to treat flower once a week; another employee stated it
9 had been used almost daily.

10 19. Department staff also found a logbook documenting use of the ETO machine.
11 This logbook indicated the ETO machine had been used to sterilize marijuana at least 27
12 times from December 27, 2018, up to and including on March 9, 2019.

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

19 VIOLATIONS OF LAW

20 21. CCB incorporates all prior Paragraphs as though fully set forth herein.

21 22. As to the Prior Agent Cards and the Current Agent Cards, Respondent
22 Characky violated NAC 453D.905(3)(a)(3) by intentionally providing false information to
23 the Department. Specifically, Characky, a Fidelis employee and operations manager: (1)
24 told Department staff that Fidelis did not have an ETO machine on site, when he knew it
25 did; (2) told Department staff that the ETO machine was not used on marijuana, when he
26 knew it was; and (3) told Department staff that the radiation machine Fidelis was using
27 had the required DPH certificate when he knew it did not. These three acts constitute three
28 Category I violations. The first violation carries a fine of \$35,000 and a suspension of up to

1 30 days or revocation of cannabis establishment agent registration cards; the two violations
2 thereafter require revocation of Characky's cannabis establishment agent registration
3 cards. In the alternative, should the CCB find that Characky provided the foregoing false
4 information unintentionally, then Characky has violated NAC 453D.905(3)(b)(1) by making
5 unintentional false statements to the Department. If that is the case, these violations
6 constitute three Category II violations. The first Category II violation carries a \$10,000 fine
7 and a suspension up to 20 days. The second carries a \$20,000 fine and a cannabis
8 establishment agent registration card suspension up to 30 days. The third Category II
9 violation requires revocation of the cannabis agent registration cards.

10 23. As to the Prior Agent Cards and the Current Agent Cards, Respondent
11 Characky violated NAC 453D.905(3)(a)(4) by intentionally concealing evidence.
12 Specifically, Characky was aware that Ethylene Oxide was an unapproved pesticide and
13 that use of an ETO machine was prohibited. Characky purposefully concealed the use of
14 Ethylene Oxide and the ETO machine by hiding, and/or aiding and abetting in the hiding
15 of, the ETO machine under a cardboard box, hiding the exhaust tube under a lab coat, and
16 concealing the portion of the ETO machine exhaust tube in the adjacent trimming room by
17 also hiding that under a cardboard box. Characky further instructed Fidelis employees to
18 guide Department staff away from the ETO machine, should it inspect the Fidelis premises,
19 and/or aided or abetted in such instructions. This is a Category I violation. As this is the
20 fourth Category I violation, this violation requires revocation of cannabis establishment
21 agent registration cards.

22 24. As to the Prior Agent Cards and the Current Agent Cards, Respondent
23 Characky violated NAC 453D.905(3)(a)(2) by allowing Fidelis, as its facilities and
24 operations manager, to operate without the required permits, licenses and certificates.
25 Specifically, Characky allowed Fidelis to use its 420 Rad Source machine without the
26 required certificate from DPH. This is a Category I violation. As this is the fifth Category I
27 violation, this violation requires revocation of cannabis establishment agent registration
28 cards.

1 **DISCIPLINE AUTHORIZED**

2 25. Pursuant to the provisions of NRS 678A.600, NRS 678D.450, NRS 453D.228,
3 NAC 453A.348, NAC453A.350, NAC 453D.365, NAC 453D.900, and NAC 453D.905, the
4 CCB has the discretion to impose the following disciplinary actions:

- 5 1. Revoke the Prior Agent Cards and the Current Agent Cards;
6 2. Suspend the Current Agent Cards;
7 3. Impose a civil penalty of not more than \$35,000 for each separate violation of
8 Chapter 453D on the Prior Agent Cards and the Current Agent Cards; and
9 4. Take such other disciplinary action as the CCB deems appropriate.

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

11 **RELIEF REQUESTED**

12 Based on the foregoing, counsel for the CCB respectfully requests the CCB impose
13 the penalty of revocation of the Prior Agent Cards and the Current Agent Cards. Pursuant
14 to NAC453D.940(8)(a) and NCCR 4.030(1)(b), counsel for the CCB respectfully requests a
15 determination from CCB that Characky be barred from applying for any cannabis
16 establishment agent registration card for 9 years and 11 months following the imposition
17 of revocation of his Current Agent Cards.

18 In addition, counsel for the CCB requests the CCB impose civil penalties against
19 Characky in the amount of \$35,000².

20 Counsel for the CCB further reserves its right to seek costs in the amount expended
21 for CCB's time and effort through hearing and rehearing (if applicable) of this complaint,
22 pursuant to NAC 453A.352(4) and 453.200(3).

23 In sum, counsel for the CCB respectfully requests the CCB order revocation of the
24 Prior Agent Cards and the Current Agent Cards and fines and penalties in the total amount
25 of \$35,000.00.

26 **NOTICE TO RESPONDENT**

27 **PLEASE TAKE NOTICE**, that Respondent has a right to request a hearing on the
28

² \$30,000 in the alternative, should the CCB find the violations in Paragraph 22 to be unintentional.

1 charges set forth herein, pursuant to NRS 678A.510 through 678A.590. Failure to
2 demand a hearing constitutes a waiver of the right to a hearing and to judicial
3 review of any decision or order of the Board, but the Board may order a hearing
4 even if the respondent so waives his or her right. NRS 678A.520(2)(e).

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

8 (a) Must state in short and plain terms the defenses to each claim asserted.

9 (b) Must admit or deny the facts alleged in the complaint.

10 (c) Must state which allegations the respondent is without knowledge or information
11 form a belief as to their truth. Such allegations shall be deemed denied.

12 (d) Must affirmatively set forth any matter which constitutes an avoidance or
13 affirmative defense.

14 (e) May demand a hearing. Failure to demand a hearing constitutes a waiver
15 of the right to a hearing and to judicial review of any decision or order of
16 the Board, but the Board may order a hearing even if the respondent so waives his
17 or her right.

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

22 The Board shall determine the time and place of the hearing as soon as is reasonably
23 practical after receiving the respondent's answer. The Board shall deliver or send by
24 registered or certified mail a notice of hearing to all parties at least 10 days before the
25 hearing. The hearing must be held within 45 days after receiving the respondent's answer
26 unless an expedited hearing is determined to be appropriate by the Board, in which event
27 the hearing must be held as soon as practicable. NRS 678A.520(4).

28

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

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

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

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

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

23 If Respondent does not wish to dispute the charges and allegations set forth herein,
24 within 30 days of the service of this Complaint, Respondent may pay the civil penalties and
25 costs set forth above in the total amount of \$35,000.00 and surrender the Current Agent

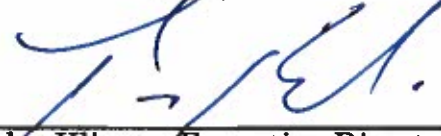
26 Cards to:

27 Tyler Klimas, Executive Director
28 Cannabis Compliance Board
555 E. Washington Avenue, Suite 4100
Las Vegas, Nevada 89101

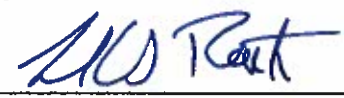
1 YOU ARE HEREBY ORDERED to immediately cease the activity described above
2 which is a violation of Nevada law.

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: 
14 L. Kristopher Rath (Bar No. 5749)
15 Senior Deputy Attorney General
16 Ashley A. Balducci, (Bar No. 12687)
17 Senior Deputy Attorney General
18 555 E. Washington Ave, Suite 3900
19 Las Vegas, Nevada 89101
20 (702) 486-9287
21 Attorneys for the Department