

IN THE SUPREME COURT OF THE STATE OF NEVADA

STATE OF NEVADA ex rel. BOARD
OF PHARMACY, a public entity of
the State of Nevada,

Appellant,

vs.

CANNABIS EQUITY AND
INCLUSION COMMUNITY (CEIC),
a domestic non-profit organization; and
ANTOINE POOLE, an individual,

Respondents.

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On Appeal from the Eighth Judicial District Court
Clark County, Nevada, No. A-22-851232-W

RESPONDENTS' ANSWERING BRIEF

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NRAP 26.1 DISCLOSURE

The undersigned counsel of record certifies that the following persons and entities as described in NRAP 26.1(a) must be disclosed. These representations are made in order that the justices of this Court may evaluate possible disqualification or recusal.

Cannabis Equity and Inclusion Community (“CEIC”) is a domestic nonprofit corporation organized and existing under and by virtue of the laws of the State of Nevada. CEIC does not have parent corporations and no corporation owns 10% or more of the party’s stock.

Antoine Poole is an individual; therefore, there are no parent corporations or publicly held companies that own 10% or more of the party’s stock.

The undersigned counsel of record further certifies that the ACLU of Nevada and its attorneys Sadmira Ramic, Christopher M. Peterson, and Sophia A. Romero, along with the national ACLU through its attorney Julie A. Murray, are the only attorneys who have appeared for parties in the case (including proceedings in the district court) or who are expected to appear in this Court.

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INTRODUCTION

Due to a series of ballot initiatives passed directly by Nevada voters, cannabis is legal in Nevada. Nevadans have a state constitutional right under Article 4, Section 38, to access medical cannabis to treat and alleviate the symptoms of serious illnesses, including cancer, glaucoma, and AIDS. And Nevada law allows for the cultivation, distribution, and consumption of cannabis for recreational use, with regulation by Nevada’s Cannabis Compliance Board serving as the foundation for a multi-million-dollar industry. These voter-driven changes in law reflect a state paradigm shift from Nevada’s blanket prohibition on cannabis for most of the twentieth century to today’s general acceptance of cannabis for public consumption.

In spite of these changes, Nevada’s State Board of Pharmacy (“Board”), an executive agency headed by unelected state officials, continues to regulate cannabis as a Schedule I controlled substance, a category reserved for substances that are highly addictive and have no recognized medical use in the United States. This regulation—a holdover from the state’s war on drugs—serves as a predicate for some of the most severe drug-related criminal penalties in the state, and it treats cannabis as on par with cocaine and more dangerous than fentanyl.

The district court held that the Board’s classification of cannabis as a Schedule I substance is directly at odds with Nevada statutes governing recreational and medical cannabis and with the voter-initiated state constitutional provision

recognizing and protecting medical cannabis use. The court’s conclusion that the Board’s regulatory action is unconstitutional and outside the agency’s administrative authority is unquestionably correct and should be affirmed.

ISSUES PRESENTED

1. Whether the district court correctly concluded that the Board’s designation of cannabis in NAC 453.510 as a Schedule I substance, a classification that Nevada statute permits only for substances with “no accepted medical value in the United States,” violates the Nevada Constitution in that Article 4, Section 38, explicitly recognizes that cannabis has medical value and protects its use by patients with certain enumerated medical diagnoses.

2. Whether the district court was right to hold that the Board’s designation of cannabis in NAC 453.510 as a Schedule I substance exceeds its statutory authority, where Nevada voters adopted, and the Legislature implemented, a comprehensive regulatory regime for the cultivation, transportation, storage, dispensation, and use of cannabis that displaces any role the Board once played in cannabis regulation.

3. Whether the district court erred when it concluded that respondent Cannabis Equity and Inclusion Community (“CEIC”) has standing on three independent grounds (organizational, representational, and public-interest standing) and that Mr. Poole likewise has standing to challenge the legality of the Board’s scheduling of cannabis as a Schedule I controlled substance.

4. Whether the district court exceeded its remedial authority when, in addition to entering declaratory relief, it granted a writ of mandamus ordering the Board to remove cannabis from NAC 453.510, where doing so was necessary to provide full relief to respondents and promoted judicial efficiency.

5. Whether the district court correctly held that a party may recover attorney fees under NRS 34.270, which permits an award of “costs” and “damages” to a prevailing plaintiff seeking mandamus relief.

STATEMENT OF FACTS

I. Nevada's Uniform Controlled Substances Act

In 1971, the Nevada Legislature adopted the Uniform Controlled Substances Act (“UCSA”). NRS 453.011–.348. The UCSA establishes a classification system for all drugs designated as “controlled substances,” a designation process that is carried out today by the state executive branch. NRS 453.166–.206. Schedule I—the most heavily regulated of the classifications—includes substances such as methamphetamine, heroin, and cocaine. NAC 453.510. To be a Schedule I drug, a substance must have a “high potential for abuse,” and have “no accepted medical use in treatment in the United States or lack[] accepted safety for use in treatment under medical supervision.” NRS 453.166. Drugs in all other classification tiers—Schedules II through V—have some accepted medical use and are classified based on the potential for abuse and dependency. *See* NRS 453.166–.206.

A drug’s scheduling classification has broad implications under the UCSA and Nevada law more generally. Most relevant here, the UCSA criminalizes a range of conduct involving the possession, manufacturing, distribution, disposition, and prescription of controlled substances. *See* NRS 453.316–.348. These criminal provisions apply not only to licensed professionals, such as pharmacists and physicians, but also to anyone engaged in activity that violates the UCSA. *Id.*

Moreover, the severity of the UCSA’s criminal penalties depends in large part on how the controlled substance at issue has been scheduled, with offenses related to lower-numbered schedules correlating with the harshest punishments. For example, “importing, transporting, selling, exchanging, bartering, supplying, prescribing, dispensing, giving away, or administering” a substance classified as a Schedule I substance is considered a Class C Felony with a sentencing range of one to five years in prison as a first offense, while similar activity with a Schedule III substance is a D Felony. *Compare* NRS 453.321(2)(a), *with* NRS 453.321(4)(a).

The Board plays a key role in the UCSA’s administration. *See* NRS 639.070 (discussing the Board’s regulatory authority). In particular, the Board is the only agency with authority to designate a drug as a controlled substance in Nevada and to place that drug within one of the UCSA’s schedules. *See* NRS 453.146(1) (describing the Board’s factfinding authority to designate substances as “controlled substances”); *Sheriff v. Luqman*, 101 Nev. 149, 151–52, 697 P.2d 107, 109 (1985) (describing 1981 amendment to the UCSA conferring such authority on the Board). The UCSA requires the Board to “[r]eview the [controlled substances] schedules annually and maintain a list of current schedules.” NRS 453.211. The Board’s current designations of Schedule I through V substances are codified by regulation at NAC 453.510–.550.

Given the Board’s role, its scheduling decisions affect any Nevadans subject to criminal penalties established by the UCSA or other statutes that incorporate scheduling determinations into their definition of criminal conduct. Accordingly, the UCSA requires the Board to disseminate to public defenders, prosecutors, and judges throughout the state any revisions to the drug schedules. NRS 453.211(1)(b).

II. Decriminalization of Cannabis in Nevada

The Board has maintained by regulation a Schedule I designation for cannabis since the Board was first delegated scheduling authority in 1981. J.A. Vol. II, 140:3–7. At that time, the cannabis designation aligned with Nevada law, which made even simple possession of cannabis, regardless of purpose, a state criminal offense. *Id.*

Since that time, however, Nevada voters have made clear their desire to decriminalize cannabis, and they have accordingly adopted protections for its medical and recreational use.

First, in 2000, Nevadans adopted the Nevada Medical Marijuana Act (hereinafter, the “Medical Marijuana Act”) by ballot initiative. Scott McKenna, *Medical Marijuana Laws in the Silver State*, 6 Nev. Lawyer, Aug. 10, 2002. The Medical Marijuana Act, which passed in two consecutive elections in 1998 and 2000 with resounding majorities, added Article 4, Section 38, to the Nevada Constitution. Section 38 directed the Legislature to “provide by law” for:

The use by a patient, upon the advice of his physician, of a plant of the genus Cannabis for the treatment or alleviation of cancer, glaucoma,

acquired immunodeficiency syndrome; severe, persistent nausea of cachexia resulting from these or other chronic or debilitating medical conditions; epilepsy and other disorders characterized by seizure; multiple sclerosis and other disorders characterized by muscular spasticity; or other conditions approved pursuant to law for such treatment.

Nev. Const. art. 4, § 38(1)(a). The provision did not “[a]uthorize the use or possession of [marijuana] for a purpose other than medical or use for a medical purpose in public.” *Id.* § 38(2)(a). The Nevada Legislature effectuated this amendment in 2001 by adopting Chapter 453A of the Nevada Revised Statutes, a portion of the code separate from the UCSA. *See* Assemb. B. 453, 71st Sess. (Nev. 2001).

Second, in 2016, Nevadans passed another ballot initiative involving cannabis, this time to legalize its recreational use. *Initiative to Regulate and Tax Marijuana*, Nev. Sec’y of State (Apr. 23, 2014), <https://www.nvsos.gov/sos/home/showdocument?id=3294>. Voters sought to refocus the State’s law enforcement resources away from cannabis-related activity toward an emphasis on addressing violent and other serious crime. *Id.* § 2. This second ballot initiative, called the Regulation and Taxation of Marijuana Act (hereinafter, the “Recreational Use Act”), provides that, “[n]otwithstanding any other provision” of state law, it is lawful in Nevada, and cannot “be used as the basis for prosecution or penalty, for people 21 years of age or older to possess, use, consume, purchase, obtain, process, or transport” one ounce or less of cannabis. *Id.* § 6(1). The Recreational Use Act also

declares that “[c]ultivating, manufacturing, testing, transporting, and selling marijuana” in Nevada will be “strictly controlled through state licensing and regulation,” but in a “manner similar to alcohol.” *Id.* § 2.

The Recreational Use Act initially charged the Nevada Department of Taxation with implementing the new law, *id.* § 5, but in 2019, the Legislature transferred this regulatory authority primarily to a newly created Cannabis Compliance Board. Assemb. B. 533, 80th Sess. (Nev. 2019). Under the current statutory regime, the voter-driven cannabis provisions have been consolidated in Title 56, which stretches across four chapters of the Nevada Revised Statutes. *See* NRS Chapters 678A–D. Title 56 provides a “comprehensive regulatory regime for cannabis used recreationally and medically,” and supplants the medical-use provisions added to Chapter 453A in 2001. J.A. Vol. II, 151:3–6. Every aspect of cannabis production, transportation, distribution, sale, and use is governed by the provisions in Title 56, which is broadly named “Regulation of Cannabis.” *Id.* While Title 56 expressly grants regulatory authority to a number of state and local agencies, including the Cannabis Compliance Board, it does not expressly confer any regulatory authority on, or even mention, the Board. NRS Chapters 678A–D.

The 2019 amendments to Nevada law clarified that, to the extent the UCSA is “inconsistent” with Title 56, the latter must control. *Id.* § 214, *codified at* NRS 453.005.

III. The Parties

The Board's regulation designating marijuana as a Schedule I substance continues to serve as the basis for arrests and criminal prosecutions. For example, in a declaration submitted to this Court in support of the Board's stay request, Captain Blitko from the Las Vegas Metropolitan Police Department ("LVMPD") declared that LVMPD arrests people for cannabis-related offenses predicated on the Board's regulations, and those arrests are then used to "discover and secure firearms or weapons the arrestees may have in their possession." J.A. Vol. III, 266:20–267:6. The Nevada District Attorneys Association's amicus brief similarly makes clear that Nevada law enforcement agencies prosecute people not only for a set of criminal offenses expressly regulating cannabis, but also offenses predicated on the Board's continued classification of cannabis as a Schedule I substance. *See* Br. of Amicus Curiae in Support of Appellant Nev. Dist. Attorney's Ass'n 8 (emphasizing the use of NRS 453.321 and NRS 453.337, neither of which expressly refers to cannabis, to prosecute the sale of "unregulated and unsanctioned marijuana").

Respondents CEIC and Antoine Poole are just two of the individuals and groups harmed by the Board's scheduling determination in NAC 453.510 with respect to cannabis. CEIC is a nonprofit organization whose mission is to provide support to individuals in underrepresented communities as they apply for licenses to participate in the now-legal cannabis market. J.A. Vol. II, 139:6–10. In recent years,

to serve applicants who would be ineligible for licenses due to earlier cannabis-related convictions, CEIC has had to divert its finite resources from core activities to, for example, helping applicants apply for pardons and seal their criminal records. J.A. Vol. I, 021:10–15; Vol. I, 052:14–19; Vol. I, 118:12–14; Vol. I, 125:16–17. This diversion of resources has frustrated CEIC’s mission. J.A. Vol. I, 051:7–9; Vol. II, 146:16–19. Moreover, at least one of CEIC’s members has been convicted of a cannabis-related offense in Nevada since the legalization of medical marijuana. J.A. Vol. I, 021:8–10; Vol. I, 125:19–126:1.

Poole, a resident of Nevada, has likewise been injured by the Board’s cannabis scheduling. J.A. Vol. II, 139:15–20. He was convicted in 2017 for unlawful possession of a controlled substance, in violation of NRS 453.336, and that conviction involving marijuana was predicated on the Board’s classification of cannabis as a schedule I controlled substance. J.A. Vol. II, 139:15–20; *see also State v. Poole*, No. C-16-319916-1 (Eighth Jud. Dist. Ct. Clark Cnty., Nev. filed Dec. 8, 2016). Poole continues to suffer collateral consequences from that felony conviction. J.A. Vol. II, 147:9–12.

To address the ongoing harm caused by the Board’s designation of cannabis as a Schedule I controlled substance, CEIC and Poole sued the Board, seeking a writ of mandamus requiring the Board to remove marijuana from its scheduling

designation in NAC 453.510, along with declaratory and injunctive relief. J.A. Vol. I, 16:14–18:11.

IV. The District Court’s Decision and Subsequent Developments

The district court ultimately granted the petition for writ of mandamus. It concluded that CEIC and Poole were not required to administratively exhaust claims against the Board before filing suit. J.A. Vol. I, 124:21–25:2 (citing *State Bd. of Parole Comm’rs v. Second Jud. Dist. Ct. in and for Cnty. of Washoe*, 135 Nev. 398, 401, 451 P.3d 73, 76 (2019)). It also found that CEIC and Mr. Poole had standing to seek the requested relief. J.A. Vol. I, 125:16–26:14.

As to the merits, the district court concluded that Article 4, Section 38, of the Nevada Constitution enshrined the accepted medical use of cannabis, and since the UCSA requires that Schedule I drugs have no accepted medical use, the court held that the agency’s classification of marijuana as a Schedule I controlled substance was unlawful. J.A. Vol. I, 133:3–10. Further, the district court held that the comprehensive regulatory scheme that Nevadans and the Legislature had implemented after adoption of the Recreational Use Act in 2016 stripped the Board of its authority to regulate marijuana. J.A. Vol. I, 129:24–25; Vol. I, 130:1–6. The district court also awarded attorney fees to CEIC and Poole under NRS 34.270, which provides for an award of “costs” and “damages” to a prevailing applicant for mandamus. J.A. Vol. III, 348:13–350:21.

In April this Court subsequently stayed the district court’s judgment pending appeal. The Board appealed both the merits decision and the attorney-fee award, and those appeals have been consolidated in this matter.

In May overwhelming majorities in the Nevada Legislature voted to issue a resolution calling on Congress to remove cannabis from Schedule I of the federal Controlled Substances Act. Assemb. J. Res. 8, 82nd Sess. (Nev. 2023). In doing so, the Legislature cited with approval the district court’s holding in this case “that cannabis is no longer a schedule I controlled substance in Nevada.” *Id.* And it declared that “[m]arijuana has many currently accepted medical uses in the United States,” and that the “medical value of cannabis was enshrined into Nevada’s constitution through the addition of Article 4, Section 38.” *Id.*

SUMMARY OF ARGUMENT

The district court was correct to hold that the Board’s regulation of cannabis as a Schedule I substance violates Nevada law. First, the Board’s regulation violates Article 4, Section 38, of the Nevada Constitution because NRS 453.166 requires the Board to find that cannabis has “no accepted medical use in treatment in the United States” to be a Schedule I substance, whereas Article 4, Section 38 expressly recognizes that cannabis has an accepted use in medical treatment and in fact protects that use. *Compare* NRS 453.166, *with* Nev. Const. art. 4, § 38. Second, the Board’s continued regulation of cannabis violates NRS Title 56 in that amendments to that

title displaced any regulatory authority the Board might once have had with respect to cannabis, and the Board’s continued maintenance of NAC 453.510 listing cannabis as a controlled substance conflicts with Title 56’s comprehensive plan for cannabis regulation. **(Part I)**

The district court was also correct to hold on three independent grounds that CEIC has standing in this case, and that Poole likewise has standing to bring his claims. This Court need only agree on any one of those grounds—for *either* plaintiff—to affirm the declaratory and mandamus relief entered here, and it can easily do so. It is undisputed on appeal that Poole and CEIC are and continue to be injured by the collateral consequences of cannabis-related convictions in Nevada. And although the Board claims those consequences stem from criminal prohibitions specific to cannabis, not prohibitions that apply more generally to “controlled substances,” the record—and the Board’s own statements to this Court in seeking a stay of the judgment—refute that claim. In any event, given CEIC’s mission and activities, it has demonstrated public-importance standing that falls well within the scope of that doctrine in Nevada. **(Part II)**

Nor did the district err in entering mandamus relief alongside a declaration that NAC 453.510 is unconstitutional and contrary to Nevada statute. Mandamus is necessary to ensure that the Board removes cannabis from the challenged regulation, which is routinely relied on by judges, prosecutors, criminal defendants, and others

in legal proceedings to which the Board is not a party. And such relief was well within the district court’s authority, both under this Court’s traditional mandamus standard, and under the alternative standard that permits such relief in cases that involve issues of substantial public importance where mandamus would further judicial efficiency. **(Part III)**

Finally, the district court appropriately awarded attorney fees to CEIC and Poole. NRS 34.270 permits an award of “costs” and “damages” to prevailing applicants for mandamus relief, and as the district court concluded, construing this language to cover attorney fees is consistent with how this Court has interpreted similarly worded statutes and rules. The Board provided no support to the contrary below, and nothing it cites on appeal provides otherwise. **(Part IV)**

ARGUMENT

I. The Board’s regulation of cannabis as a Schedule I substance violates the Nevada Constitution and Title 56’s regulatory regime.

The crux of the Board’s position on appeal is that it does not regulate cannabis, and therefore could not take any action with respect to cannabis that violates the Nevada Constitution or state statute. *E.g.*, Board Br. 9 (“The Board does not regulate intrastate trade in marijuana, nor does it supervise cultivation, distribution, or dispensary operations.”). The Board’s contention in this respect, which permeates its entire merits argument, is wrong: As this Court discussed in *Miller v. Jacobson*, “the legislature empowered the Board of Pharmacy to designate, *by regulation*, the

substances to be contained in each schedule” under the UCSA. 104 Nev. 600, 602, 763 P.2d 356, 357 (1988) (emphasis added). If the Board lists a substance as a controlled substance but steps outside the limitations designated by the Legislature, that listing is invalid. *See Miller*, 104 Nev. at 604–05, 763 P.2d at 358–59 (invalidating the Board’s designation of PAA as a controlled substance); *City of Reno v. Civ. Serv. Comm’n of City of Reno*, 117 Nev. 855, 858, 34 P.3d 120, 122 (2001) (“[A]dministrative agencies cannot enlarge their own jurisdiction.”). Here, the Board is plainly regulating cannabis by listing “marijuana” as a Schedule I substance in NAC 453.510.

With this in mind, the district court was correct in concluding that the Board’s regulation of cannabis as a Schedule I substance violates Nevada law.

A. The Board’s designation of cannabis under Schedule I violates Article 4, Section 38, which establishes cannabis’s medical use.

Article 4, Section 38 of the Nevada Constitution, adopted in 2000 and titled “Use of the Plant of genus Cannabis for medical purposes,” protects the “use [of cannabis] by a patient, upon the advice of his physician, . . . for the treatment or alleviation of” a range of enumerated medical conditions, including cancer, epilepsy, and multiple sclerosis, and any “other conditions approved pursuant to law for such treatment.” Nev. Const. art. 4, § 38(1)(a).

As observed by the district court, this constitutional protection—which the Nevada Legislature further implemented in 2001—necessarily recognizes cannabis

has an accepted use in medical treatment. J.A. Vol. II, 148:3–6. That recognition forecloses the finding necessary under NRS 453.166, which “[d]elineat[es] the qualifications for a drug classified in Schedule I,” *Luqman*, 101 Nev. at 156, 697 P.2d at 112, and provides that a Schedule I designation applies only where a drug “[h]as no accepted medical use in treatment in the United States or lacks accepted safety for use in treatment under medical supervision.” NRS 453.166; *accord* Board Br. 14. Accordingly, Article 4, Section 38 renders NAC 453.510 as it pertains to cannabis unconstitutional and invalid.

The Board admits that NAC 453.510 and Article 4, Section 38 “set forth competing statements about the medical benefits of marijuana.” Board Br. 13. But it argues that its scheduling regulation and Article 4, Section 38 can still “operate in separate regulatory spheres.” *Id.* In so arguing, the agency fails to appreciate its relationship to the Nevada Constitution, which “is the supreme law of the state.” *MDC Rests., LLC v. Eighth Jud. Dist. Ct.*, 132 Nev. 774, 782, 383 P.2d 262, 267 (2016). Unlike agency regulations, the Nevada Constitution applies to all “spheres” of Nevada law, and the Board’s proposed harmonization of that constitutional provision with its own regulation is not entitled to any deference. *Div. of Ins. v. State Farm Mut. Auto Ins. Co.*, 116 Nev. 290, 293, 995 P.2d 482, 485 (2000) (recognizing that “a court will not hesitate to declare a regulation invalid when the regulation violates the constitution”).

The Board’s more specific arguments challenging the district court’s opinion fare no better.

First, the Board suggests that NAC 453.510 is valid and constitutional because “the Board must impose ... restrictions” similar to the federal Food and Drug Administration’s “as a means of protecting the integrity of pharmaceutical drugs as they flow through the stream of commerce into Nevada.” Board Br. 23. But as the Board conceded below, it “is not mandated to follow federal law when scheduling, rescheduling or deleting a controlled substance, provided the Board makes the determinations required” by Nevada state law under its own UCSA. J.A. Vol. I, 071:6–8.

The plain language of NRS 453.146, on which the Board relies, confirms as much: That statute provides only that the Board “*may* consider findings of the federal Food and Drug Administration [“FDA”] or the Drug Enforcement Administration as prima facie evidence relating to one or more of the determinative factors” in its scheduling decisions. NRS 453.146(3) (emphasis added). That provision does not relieve the Board from making findings that satisfy the test imposed by NRS 453.166, that a Schedule I substance has “high potential for abuse” and has “no accepted medical use.” *Id.*¹ Nor does NRS 453.146 provide that the Board may

¹ In claiming that it “must” impose restrictions similar to those of federal agencies, the Board cites to NRS 453.146(3), NRS 453.166, NRS 453.2186, and NRS 453.2188. Board Br. at 23. However, this appears to be a *post hoc* justification

exercise its discretion to consider FDA findings as prima facie evidence in scheduling where another portion of Nevada law—here, Article 4, Section 38—is more specific and forecloses the agency’s use of its scheduling discretion in that manner.

Similarly, to the extent that the Board argues that the federal government has preempted more lenient cannabis regulation by Nevada state agencies, *see* Board Br. 11 (citing *Mut. Pharm. Co. v. Bartlett*, 570 U.S. 472, 133 S.Ct. 2466 (2013)), that contention was never raised below and has therefore been forfeited. *See Old Aztec Mine, Inc. v. Brown*, 97 Nev. 49, 52, 623 P.2d 981, 983 (1981). It is, in any event, incorrect. While federal law criminalizes the distribution of cannabis in interstate commerce, Nevada not only recognizes cannabis as legal but actively regulates, licenses, and taxes the cannabis market within the state.² *See* J.A. Vol. II, 151:7–22. The Board’s position, if accepted, would wipe out not only a constitutional provision protecting medical use of cannabis, but also an entire regulatory regime and a multi-

for its regulation of cannabis. The Board was required to cite to any legal authority it used in promulgating its list of Schedule I substances. *See* NRS 233B.040 (requiring every regulation promulgated by an agency to include “[a] citation of the authority pursuant to which it, or any part of it, was adopted”). Notably, the Board does not cite to NRS 453.166, NRS 453.2186, or NRS 453.2188 in NAC 453.510.

² NRS 453.166 and Article 4, Section 38 are perfectly compatible as NRS 453.166 does not require the Board to designate cannabis a Schedule I substance; when the Board attempts to shoehorn a substance through NRS 453.166 in a manner that requires the Board to contradict Nevada’s constitution, it is the Board’s action, not the statute, that is put at risk.

million-dollar industry for cannabis in this state. *See Nev. Dep’t of Tax’n, Cannabis Tax Revenue*, last updated Aug. 25, 2023, *available at* <https://tax.nv.gov/uploadedFiles/taxnvgov/Content/TaxLibrary/NV-Cannabis-Revenue-FY23%20June.pdf> (reporting more than \$848 million in taxable sales by Adult-Use Retail Stores and Medical Dispensaries).

The Board also claims that it must maintain cannabis on its list of Schedule I substances or its licensees and registrants will be in jeopardy of violating federal law. Board Br. 23. Considering that multiple states have removed cannabis from their lists of Schedule I substances, with some states even dispensing cannabis through their pharmacies without apparent consequence, this fear is purely speculative.³

Second, the Board claims that its listing of cannabis as a Schedule I substance is consistent with Article 4, Section 38 because the Schedule I determination hinges on whether cannabis has a recognized “use in treatment in the United States,” and that use is “determined by reference to state *and* federal law.” Board Br. 19 (emphasis added). The Board points to the fact that the FDA has not approved cannabis for “manufacture,” and argues that “use in treatment in the United States”

³ States such as Arkansas, North Carolina, and Tennessee have scheduled cannabis as a Schedule VI substance, while Colorado and Illinois have completely removed it from their controlled substance schedules. *See* 007-07 Ark. Code R. § 002; 10A N.C. Admin. Code 26F.0107; Tenn. Comp. R. & Regs. 0940-06-01-.06; Colo. Rev. Stat. § 18-18-203; 720 Ill. Comp. Stat. Ann. 570/203.

“refers specifically to FDA-approved substances distributed in interstate commerce.” Board Br. 22–23.

The Board’s position cannot be squared with precedent. At least one federal circuit court has explicitly rejected a similar argument that “FDA interstate marketing approval is necessary to satisfy th[e] [medical-use] criterion [under the federal Controlled Substances Act] because, otherwise, the substance could not be deemed to be ‘generally approved’ everywhere in the United States.” *Grinspoon v. Drug Enf’t Admin.*, 828 F.2d 881, 886 (1st Cir. 1987).

Moreover, as the district court explained, the term “use in the United States” refers to this country’s geographic boundaries. JA 149:6–11; *accord Grinspoon*, 828 F.2d at 886 (finding evidence while analyzing the federal Controlled Substances Act that “Congress did not intend ‘accepted medical use in the United States’ to require a finding of recognized medical use in every state or . . . approval for interstate marketing of the substance”); *see also Fitisemanu v. United States*, 1 F.4th 862, 875 (10th Cir. 2021) (“The Citizenship Clause’s applicability hinges *on a geographic scope clause*—‘in the United States[.]’” (emphasis added)); *Kernel Recs. Oy v. Mosley*, 694 F.3d 1294, 1304 (11th Cir. 2012) (describing “in the United States” as a “strict temporal and geographic requirement”); *United States v. Balde*, 943 F.3d 73, 81 (2d Cir. 2019) (“[A] person, citizen or noncitizen, is ‘in’ the United States when he or she is present within its geographic borders.”). The Board’s interpretation

of “in the United States” is also inconsistent with how that term is used throughout the Nevada Revised Statutes. *See, e.g.*, NRS 2.460 (referring to the physical location of libraries “in the United States”); NRS 179A.160(2)(d) (referring to “any jurisdiction in the United States”).

Because Nevada falls within the boundaries of the United States and its voters adopted Article 4, Section 38 to recognize and protect medical use of cannabis, cannabis has an “accepted use in treatment in the United States” for purposes of Nevada law, and thus cannot be designated a Schedule I substance under NRS 453.166. Contrary to the Board’s contention, Board Br. 19, that straightforward conclusion does not depend on ascribing two separate meanings to the term “accepted use in treatment in the United States,” one before and one after the adoption of Article 4, Section 38. That term has maintained a consistent meaning over time; it is cannabis’s “accepted use” that has changed in Nevada.

Ceballos v. NP Palace, LLC, on which the Board relies, does not hold otherwise. 138 Nev. Adv. Op. 58, 514 P.3d 1074, 1077–78 (2022). In *Ceballos*, this Court interpreted the term “*lawful . . . in this state*,” 514 P.3d at 1076 (emphasis added), to mean legal under both state and federal laws applicable in Nevada. *Id.* at 1078. But that term is fundamentally different from the language used in the UCSA, which focuses not on lawfulness, but on the Board’s findings of fact with respect to whether a substance has an accepted medical use in the United States. NRS 453.166.

Put another way, if the Board were correct that “accepted use in treatment in the United States” means that a use is accepted as legal by both the state *and* federal governments, the Board would never have authority to diverge from findings by the FDA as to a substance’s medical utility. Yet Nevada’s UCSA expressly recognizes that the FDA’s findings are not binding on the Board, and it establishes a process by which the Board can diverge from the FDA in scheduling determinations. *See* NRS 453.146(3) (providing that the “Board *may* consider findings of the federal [FDA] or the Drug Enforcement Administration”); NRS 453.2182 (authorizing the Board to object to the scheduling of a substance that the federal government has listed as a controlled substance).

B. The Board’s regulation of cannabis violates NRS Title 56.

In addition to its constitutional ruling, the district court held that the Board no longer has authority to list cannabis as a controlled substance of any kind because that authority is inconsistent with NRS Title 56. J.A. Vol. I, 129:24–30:2. As it explained, Title 56 establishes a “comprehensive regulatory regime” that governs “[e]very aspect of cannabis production, transportation, distribution, sale, and use.” J.A. Vol. I, 130:3–6. Title 56’s heading—“Regulation of Cannabis”—likewise confirms its broad sweep. J.A. Vol. I, 130:9–10, 28; *see also State v. Ducker*, 35 Nev. 214, 127 P. 990, 993 (1912) (looking to “titles of chapters and headings of sections” in repeal-by-implication case). And Title 56 does not even mention the

Board, much less purport to delegate authority to it. J.A. Vol. I, 131:2–3; *see also* J.A. Vol. I, 130:9–22 (comparing this omission to Title 56’s express grants of authority to other agencies and entities that regulate marijuana). Although the Board argues that the court’s decision in this regard is erroneous, *see* Board Br. 23–26, its arguments are unavailing.

First, the Board contends that the district court’s decision was contrary to “precedent establishing that ‘repeals by implication are not favored.’” Board Br. 24 (quoting *Thorpe v. Schooling*, 7 Nev. 15, 17–18 (1871)). That is incorrect.

The district court explicitly recognized this presumption. J.A. Vol. I, 132:14–19. However, even if the presumption applies, legislative intent must ultimately control and may be “expressed or manifested” in numerous ways. *Thorpe*, 7 Nev. at 18. To discern intent, Nevada courts look not only to “the text of the statutes” at issue, but also to their “legislative history, the substance of what is covered by both statutes, and when the statutes were amended.” *Washington v. State*, 117 Nev. 735, 739, 30 P.3d 1134, 1137 (2001). In particular, where the Legislature adopts a “subsequent statute [that] expresses a comprehensive plan to regulate a particular subject matter,” that adoption can manifest the Legislature’s intent to “repeal prior statutes that deal with smaller aspects of that plan.” *Id.*; *accord Thorpe*, 7 Nev. at 18; *S. Nev. Tel. Co. v. Christoffersen*, 77 Nev. 322, 326, 363 P.2d 96, 98 (1961). The

district court faithfully applied this precedent in its analysis of statutory text, structure, and history.

Notably, Title 56 is similar to the statutes at issue in *Christoffersen*, 7 Nev. at 323–24, 363 P.2d at 96–97. *Christofferson* held that a statute vesting a public service commission with “full power” to “prescribe classifications of the service of all public utilities, and fix and regulate [related] rates” impliedly repealed a narrower, earlier law entitling people to sue telephone corporations that failed to provide sufficient service. *Id.* at 326, 363 P.2d at 98. So, too, here: The Board traditionally played a narrow but core role in the regulation of cannabis through its controlled-substance designations, and the Legislature—by adopting the comprehensive regulatory regime set out in Title 56—displaced the Board from these “smaller aspects of” cannabis regulation. *Washington*, 117 Nev. at 739, 30 P.3d at 1137.

Second, the Board claims that the district court’s rationale is inconsistent with NRS 453.005, which provides that the “provisions of this chapter [i.e., the UCSA] do not apply to the extent that they are inconsistent with the provisions of title 56 of NRS.” Board Br. 25 (cleaned up). In the Board’s view, the inclusion of this provision in the UCSA demonstrates that the Legislature intended for Title 56 to coexist with the UCSA and thus leaves the Board free to classify cannabis as a Schedule I controlled substance. *Id.*

To the contrary, NRS 453.005 cuts strongly *against* the Board’s position. That provision demonstrates that the Legislature in fact expected that inconsistencies would arise between the UCSA’s provisions and Title 56’s new regime, and it directed that Title 56 should prevail in each such case. As applied here, NRS 453.005 thus tells courts *expressly* that, “to the extent that” the Board’s authority to schedule drugs as controlled substances is “inconsistent with the provisions of title 56 of NRS,” that authority “do[es] not apply” any longer.

Third, the Board argues that the Legislature has acquiesced to the Board’s scheduling of cannabis as a controlled substance in NAC 453.510, so there is no conflict between the regulation and Title 56. Board Br. 24. That argument is at odds with both fact and precedent.

As discussed, in 2019 the Legislature adopted NRS 453.005, thus paving the way for invalidation of any state actions under the UCSA, including the Board’s, that are inconsistent with Title 56. In addition, the Board’s litigating position cannot be reconciled with the Legislature’s recent resolution calling on Congress to remove marijuana from the federal Controlled Substances Act’s Schedule I and endorsing the district court’s decision in this very case. *See* Assemb. J. Res. 8, 82nd Sess. (Nev. 2023). Thus, far from acquiescing in the Board’s scheduling determination for cannabis, the Legislature is proceeding as if that determination is null and void and will remain so. In any event, as the district court in this case observed, “[u]nlawful

acts, performed long enough with sufficient vigor, are never enough to amend the law.” J.A. Vol. I, 128:14–15 (quoting *McGirt v. Oklahoma*, 140 S.Ct. 2452, 2482 (2020)).

II. CEIC and Poole have standing to petition for a writ of mandamus and seek declaratory relief.

To have standing in Nevada courts, a plaintiff typically must show some injury, that the injury is caused by the activity of which the plaintiff complains, and that the requested relief will redress that injury. *See Nat’l Ass’n of Mut. Ins. Cos. v. Dep’t of Bus. & Indus., Div. of Ins.*, 139 Nev. Adv. Op. 3, 524 P.3d 470, 476 (2023). However, unlike federal standing principles, the doctrine in Nevada is “a self-imposed rule of restraint,” rather than constitutionally required. *Ferguson v. LVMPD*, 131 Nev. 939, 952, 364 P.3d 592, 600 (2015). And this Court has “made exceptions” to the doctrine in cases where the Legislature has conferred statutory standing on a plaintiff, and where a case involves certain issues of public importance, including separation-of-powers disputes. *Nat’l Ass’n of Mut. Ins. Cos.*, 139 Nev. Adv. Op. 3, 524 P.3d at 476.

In this case, the district court held that CEIC demonstrated three independent forms of standing to seek relief: organizational standing based on harms to CEIC and its mission, associational standing based on harms to CEIC’s members who have suffered convictions hinging on the Board’s scheduling of cannabis, and public-importance standing given the nature of the issues in this case. J.A. Vol. I, 125:16–

126:8. The district court also concluded that Poole had standing to seek relief given the collateral consequences he continues to experience from an earlier conviction of a crime whose elements were triggered by the Board’s scheduling designation for cannabis. J.A. Vol. I, 126:9–12.

This Court may affirm so long as any one of the theories of standing passed on by the district court—for *either* of the respondents—is meritorious because in a suit “with multiple plaintiffs, generally only one plaintiff need have standing for the suit to proceed.” *Mecinas v. Hobbs*, 30 F.4th 890, 897 (9th Cir. 2022) (stating federal standard); *Marijuana Pol’y Project v. Miller*, 578 F. Supp. 2d 1290, 1299 (D. Nev. 2008); *see also Nat’l Ass’n of Mut. Ins. Cos.*, 139 Nev. Adv. Op. 3, 524 P.3d at 480 (“Declaratory relief actions ... do not require tailored proof of how a regulation will impact each member.”).

A. CEIC and Poole have traditional standing to petition for a writ of mandamus and seek declaratory relief.

On appeal, the Board offers only one argument that the district court erred as to traditional standing: While it does not dispute that Poole and CEIC are suffering collateral consequences from cannabis-related convictions, it claims they lack standing because these consequences stem from criminal convictions that apply to cannabis irrespective of the Board’s scheduling designation for cannabis in NAC 453.510. *See* Board Br. 30 (citing NRS 453.096, 453.339, and 453.3393). Relatedly, the Board claims that, when charging cannabis-involved crimes, law

enforcement agencies rely only on Nevada criminal statutes that expressly regulate cannabis, as opposed to more general statutes that regulate “Schedule I” drugs, or drugs designated as “controlled substances.” *Id.*; *see also id.* (contending that Nevada “law does not punish marijuana-related offenses in reference to marijuana’s listing as a schedule I controlled substance”).

That contention is wrong, as demonstrated by the record. Poole was adjudicated guilty in the Eighth Judicial District Court under NRS 453.336(2), a statutory subsection applying to possession of a Schedule I or II controlled substance, *see* Register of Actions, *State v. Poole*, Case No. C-16-319916-1, and that conviction was based on “possession of marijuana,” J.A. Vol. I, 024:5–9.⁴ The Board’s designation of cannabis as a “controlled substance,” NAC 453.510, was therefore dispositive as to whether NRS 453.336(2) applied to Poole’s possession offense. And that designation was unlawful at the time of Poole’s conviction, which came more than a decade after Nevadans adopted Article 4, Section 38, of the Nevada Constitution, and thus recognized that marijuana has an accepted medical use. J.A. Vol. I, 024:13; Nev. Const. art. 4, § 38.

Similarly, the district court correctly held that CEIC has traditional standing in (1) a representative capacity on behalf of members like Poole whose convictions

⁴ Available at <https://www.clarkcountycourts.us/Anonymous/default.aspx#MainContent> (confirming subsection of law on which conviction was based).

have hinged on the Board’s scheduling determination, and (2) in an organizational capacity. J.A. Vol. I, 125:16–126:3. CEIC is a non-profit organization that aids individuals from underrepresented communities as they apply for licenses to participate in the legal cannabis market. J.A. Vol. II, 139:6–14. While providing support to these individuals, CEIC recognized that some were unable to apply for licenses because of cannabis-related convictions stemming from the Board’s scheduling. CEIC had to divert its resources from core assistance to individuals in the licensing process to help those individuals apply for pardons and seal cannabis-related records. J.A. Vol. II, 146:16–19.

The district court’s order in CEIC’s favor will redress these injuries by precluding at least those cannabis-related convictions that hinge on the Board’s scheduling determination, and thus permitting CEIC to cease, or at least reduce, expenditures of money, time, and resources on helping individuals obtain pardons or seal their records. In turn, relief in this case would enable CEIC to assist a greater number of eligible members, given the outsized impact of cannabis-related convictions on underrepresented communities.⁵

⁵ More than six million arrests for marijuana possession occurred between 2010 and 2018, and Black people are still more likely to be arrested for marijuana possession than white people in every state, including those that have legalized marijuana. *See generally* American Civil Liberties Union, *A Tale of Two Countries: Racially Targeted Arrests in the Era of Marijuana Reform* (2020), <https://www.aclu.org/report/tale-two-countries-racially-targeted-arrests-era-marijuana-reform>.

Other indicia of prosecutions, including the Board’s own statements in this case, confirm that law enforcement in Nevada continue to arrest and prosecute individuals for possession of cannabis based on the Board’s listing of cannabis as a Schedule I substance. As discussed above, the Board has conceded that an order preventing the Board from “assigning a controlled substance schedule to marijuana” would bar officers from relying on charges that they routinely use in the Las Vegas resort corridor. J.A. Vol. III, 266–67; *see also, e.g., LaChance v. State*, 130 Nev. 263, 269, 275; 321 P.3d 919, 924, 928 (2014) (discussing only marijuana as the basis of a prosecution for possession of a controlled substance pursuant to NRS 453.336(2)).

Similarly, Nevada law requires the Board to disseminate to public defenders, prosecutors, and judges throughout the state any revisions to the drug schedules. NRS 453.211. The Board provides no explanation for why the statute would require the Board to do so if, as the Board contends, criminal prosecutions are not initiated on the basis of the Board’s scheduling designation.

B. CEIC has standing under the public-importance doctrine as articulated in *NPRI*.

Even if this Court held that neither CEIC nor Poole has traditional standing, the district court’s ruling should nonetheless be affirmed because CEIC has standing under the public-importance standing doctrine as described in *Nevada Policy*

Research Institute, Inc. v. Cannizzaro, 138 Nev. Adv. Op. 28, 507 P.3d 1203, 1207–08 (2022) (“*NPRF*”).

The public-importance doctrine applies where “(1) [a] case presents ‘an issue of significant public importance,’” (2) “the plaintiff is an ‘appropriate’ party to bring the action,” and (3) among other narrow circumstances, “where a plaintiff seeks vindication of the Nevada Constitution’s separation-of-powers clause.” *Id.* (citing and expanding *Schwartz v. Lopez*, 132 Nev. 732, 743, 382 P.3d 886, 894–95 (2016)). The public-importance doctrine serves as an “exception” to the traditional requirement that a plaintiff show a “personal injury,” and by implication, that the plaintiff connect that injury to the challenged action. *Schwartz*, 132 Nev. at 743, 382 P.3d at 894–95.

On appeal, the Board does not contest *any* of the criteria that undergird CEIC’s public-importance standing. Nor could it. As the Board has stated, the issues before the Court are ones “of first impression,” J.A. Vol III, 262:19-23, with “far-reaching ramifications,” including because they affect “what may or may not constitute criminal conduct” in Nevada, J.A. Vol. III, 242:2-10. Nevada voters have twice adopted laws intended to change how cannabis is regulated in the state and to restrict the use of law enforcement resources for prosecuting cannabis offenses. *See also Schwartz*, 132 Nev. at 743 (considering history of constitutional amendments for school funding to determine whether issue was of significant public importance).

Yet, more than two decades after the Medical Marijuana Act and the addition of Article 4, Section 38, to the state constitution, the Board still treats cannabis as a Schedule I controlled substance akin to heroin, cocaine, and methamphetamine, and it thereby paves the way for continued criminal prosecutions and convictions at odds with Nevada law.

Moreover, as the district court found, the issues involved in this case are “fundamentally about separation-of-powers between the branches of Nevada’s government.” J.A. Vol. I, 126:3–8. The Board’s scheduling designation for marijuana exceeds its administrative authority, usurping the legislative role and overriding the will of voters through citizen ballot initiatives. *Cf.* Assemb. J. Res. 8, 82nd Sess. (Nev. 2023) (urging the Congress to deschedule marijuana). Because this case concerns “citizens’ interest in their form of government,” and addresses issues “that are likely to recur and for which there is a need for future guidance,” CEIC’s standing in this case falls within that doctrine’s core, no matter its scope. *NPRI*, 138 Nev. Adv. Op. 28, 507 P.3d at 1208.⁶

⁶ The public-importance standing doctrine in other jurisdictions often sweeps broadly to ensure vindication of state constitutional rights, not just separation-of-powers claims. *See, e.g., State ex rel. Cittadine v. Ind. Dep’t of Transp.*, 790 N.E.2d 978, 982 (Ind. 2003) (standing in cases involving “enforcement of a public right or duty,” or “challenging the constitutionality of governmental action, statutes, or ordinances”); *Gregory v. Shurtleff*, 299 P.3d 1098, 1109 (Utah 2013) (standing on “issues of significant public importance”); *State ex rel. Sego v. Kirkpatrick*, 524 P.2d 975 (N.M. 1974) (allowing private parties to “vindicate the public interest in cases presenting issues of great importance”); *Narragansett Indian Tribe v. State*, 81 A.3d

Finally, as to the last prong of the public-importance standing test, CEIC is an appropriate party to bring this suit. It has shown itself “capable of fully advocating [for its] position,” not only in the district court where it prevailed, but also in this Court. *Schwartz*, 132 Nev. at 743, 382 P.3d at 894–95. The “primary purpose” of standing—“to ensure the litigant will vigorously and effectively present his or her case against an adverse party”—is therefore met here. *Id.* And the Board points to no other party, nor is CEIC aware of one, who would be better positioned to bring this facial challenge against the Board. *See Utah Chapter of Sierra Club v. Utah Air Quality Bd.*, 148 P.3d 960, 972–73 (Utah 2006) (stating a court need not decide which party “is the *most* appropriate party in comparison to any other potential party, but rather” which litigants are “appropriate parties to [] full and fair litigation”)(cited by *NPRI*, 138 Nev. Adv. Op. 28, 507 P.3d at 1210).

For all these reasons, the Court should affirm the district court’s conclusion that CEIC and Poole have standing to seek relief.

1106, 1110 (R.I. 2014) (excusing the standing requirement when deciding “a case of substantial public importance”); *S.C. Pub. Int. Found. v. S.C. Dep’t of Transp.*, 804 S.E.2d 854, 859 (S.C. 2017) (granting standing to bring cases involving issues “of significant public importance” in need of future guidance); *Daily Gazette Co. v. Comm. on Legal Ethics of the W. Va. State Bar*, 326 S.E.2d 705, 707 n.2 (W. Va. 1984) (explaining that “enforcement of a public right may be sought by anyone who shares a common interest in that right with the public at large”); *Sears v. Hull*, 961 P.2d 1013, 1019 (Ariz. 1998) (examining cases that granted standing for “issues of great public importance that were likely to recur”).

III. The district court properly granted a writ of mandamus in addition to declaratory relief.

The district court concluded that CEIC and Poole were entitled not only to declaratory relief but also to “writ relief ordering the Board to remove cannabis from its list of Schedule I substances.” J.A. Vol. I, 129:1–3. That determination was correct.

First, the writ was warranted under this Court’s traditional standard permitting writ relief where necessary (1) to compel a party to “perform[] ... an act [that] the law requires as a duty resulting from [the party’s] office, trust or station,” or (2) “to control a manifest abuse” of discretion by the party, or an “arbitrary or capricious exercise of [that] discretion.” *Segovia v. Eighth Jud. Dist. Ct. in & for Cnty. of Clark*, 133 Nev. 910, 912, 407 P.3d 783, 785 (2017) (internal quotation marks omitted); *see also* NRS 34.160.

As the district court explained, *contra* Board Br. 27, the Board has a duty under NRS 453.211 to “review the [controlled-substances] schedule annually” and to respond accordingly. J.A. Vol. I, 127:14–15. Its “failure to remove marijuana” from Schedule I “year after year is an affirmation that” the agency believes cannabis remains properly classified and has no accepted medical use in the United States. J.A. Vol. I, 127:15–17; *see also* Board Br. 14 (acknowledging a “schedule I designation indicates that the substance has no accepted medical use in treatment in the United States”).

The Board maintains that its obligation to “review” controlled-substance schedules annually includes no corresponding duty to amend those schedules, and thus no mandamus relief is available. Board Br. 27. But that position conflicts with NRS 453.211, notably entitled “Review, *revision*, and dissemination of schedules,” which provides that upon revision of a schedule, the Board must “cause a copy of the revised schedule to be sent to each district attorney, public defender and judge in the State of Nevada.” NRS 453.211 (emphasis added). The statute itself thus recognizes that the Board must do more than just *read* schedules every year; it must revise them where necessary to comply with then-extant law so that individuals involved in the criminal justice system may rely on them.

Moreover, even if the Board had no statutory *duty* under NRS 453.211 to remove cannabis from Schedule I, the district court’s writ would remain correct under the traditional test because the Board at least has *discretion* to “delete or reschedule all substances enumerated in schedules I, II, III, IV and V by regulation.” NRS 453.146(1). The Board’s use of this discretion to maintain a Schedule I designation for cannabis is inconsistent with the Nevada Constitution and other statutes, *see supra* Part I, and is thus manifestly wrong and arbitrary, *see, e.g. State v. Dist. Ct. (Armstrong)*, 127 Nev. 927, 931, 267 P.3d 777, 780 (2011); *Emp.’s Ins. Co. of Nev. v. State Bd. of Exam’rs*, 117 Nev. 249, 253, 21 P.3d 628, 630–31 (2001). Such action is within the district court’s mandamus authority to correct.

Second, even if this Court concluded that the writ was unwarranted under the traditional mandamus test, the writ was nevertheless appropriate under its alternative test. Under that test, a court may grant a writ of mandamus where a party “presents legal issues of statewide importance requiring clarification,” and the court’s decision would “promote[] judicial economy and administration by assisting other jurists, parties, and lawyers.” *Debiparshad v. Eighth Jud. Dist. Ct. in & for Cnty. of Clark*, 137 Nev. 691, 693–94, 499 P.3d 597, 600 (2021) (citing *Walker v. Second Jud. Dist. Ct.*, 136 Nev. —, —, 476 P.3d 1194, 1198 (2020)).

This case falls squarely within that precedent. The question whether the Board’s scheduling of cannabis is unlawful has statewide implications, not only for individuals prosecuted for cannabis-involved offenses—and whose very liberty is at stake—but also for attorneys and judges involved in the administration of the criminal justice system. *See Freeman Expositions, LLC v. Eighth Jud. Dist. Ct.*, 138 Nev. Adv. Rep. 77, 520 P.3d 803, 807 (2022) (recognizing the need to clarify Nevada’s laws regarding medical cannabis in the employment context); *see also Debiparshad*, 137 Nev. at 693–94, 499 P.3d at 600; *Armstrong*, 127 Nev. at 929, 267 P.3d at 778.

The Board claims that mandamus is unavailable in this case because CEIC and Mr. Poole have an adequate alternative remedy in the form of declaratory relief. *See Board Br. 28*. However, this Court’s precedent forecloses that argument. *See*,

e.g., *Bus. Comp. Rentals v. State Treasurer*, 114 Nev. 63, 67, 953 P.2d 13, 15–16 (1998) (granting writ even though petitioner “could have pursued alternative avenues of relief,” because the “petition raise[d] pressing issues involving the Nevada Constitution and the public policy of this state”); *Falcke v. Douglas Cnty.*, 116 Nev. 583, 586–87, 3 P.3d 661, 662–63 (2000) (disavowing notion that declaratory relief foreclosed the availability of writ relief).

Moreover, the “circumstances” of this case make clear that “urgency and strong necessity” support issuance of the writ. *Segovia*, 133 Nev. at 912, 407 P.3d at 85(internal quotation marks omitted); *see* J.A. Vol. I, 123:3–5 (district court finding in this respect). As the UCSA recognizes, the Board’s scheduling designations are relied upon in criminal prosecutions not involving the Board. NRS 453.166. Without mandamus, the Board’s erroneous scheduling decision will remain codified in NAC 453.510, “posing a threat of continuing mischief” to CEIC, Poole, and the public at large, *Jeep Corp. v. Second Jud. Dist. Ct. of State of Nev. in & for Washoe Cnty.*, 98 Nev. 440, 443, 652 P.2d 1183, 1185–86 (1982), including in ongoing criminal proceedings to which the Board is not a named party. Forcing individuals in criminal proceedings to affirmatively raise the district court’s order invalidating the Board’s scheduling determination would be wildly inefficient for the judiciary and shows precisely why mandamus is necessary in this case.

The Board’s contention that mandamus infringes on a core legislative function of the Board or otherwise violates state separation of powers constraints, Board Br. 29, should also be rejected. As the district court recognized, administrative agencies cannot exceed the authority delegated to them. J.A. Vol. I, 129:8–11 (citing *City of Reno*, 117 Nev. at 858). The court’s writ does nothing more than require the Board to abide by the metes and bounds that the Legislature has set, and the order therefore supports, rather than undermines, the healthy division of governmental authority in Nevada. *See Bus. Comp. Rentals*, 114 Nev. at 67, 953 P.2d at 15 (compelling the State Treasurer to make payments under a lease agreement); *State v. Dickerson*, 33 Nev. 540, 540, 113 P. 105, 105 (1910) (“The Governor may be required to comply with an act of the Legislature, approved by the chief executive at the time of its passage, which directs him to perform a ministerial duty[.]”).

For all of these reasons, the district court’s decision to enter a writ of mandamus should be affirmed.

IV. The district court properly awarded attorney fees under NRS 34.270.

In Nevada, attorney fees are recoverable when “authorized by agreement, statute or rule.” *Sandy Valley Assocs. v. Sky Ranch Estates Owners Ass’n*, 117 Nev. 948, 955, 35 P.3d 964, 968 (2001), *receded on other grounds by Horgan v. Felton*, 123 Nev. 577, 170 P.3d 982 (2007). The district court, after issuing a writ of mandamus in this case, relied on NRS 34.270 as a statutory grant of authority to

award attorney fees to Poole and CEIC. J.A. Vol. III, 348:13–22. NRS 34.270 states that a successful applicant for mandamus “shall recover the damages which the applicant shall have sustained ... upon a reference to be ordered, together with costs.” Although the district court recognized that whether NRS 34.270 covers attorney fees is an open question in Nevada, J.A. Vol. III, 330:14–17, it relied on statutes and rules with language analogous to NRS 34.270, as well as statutes practically identical to NRS 34.270 from neighboring states, to conclude that attorney fees are in fact included within the scope of the statute. J.A. Vol. III, 349:5–350:15.

This Court should affirm. NRS 34.270 does not have to use the magic words “attorney fees,” as the Board insists, to permit recovery under the provision. For example, neither NRCP 65(c)1 nor NRS 17.130(1) uses the term “attorney fees,” yet courts have held that both recognize attorney fees as a cost of litigation. *See Artistic Hairdressers, Inc. v. Levy*, 87 Nev. 313, 486 P.2d 482 (1971), *modified on other grounds by Sandy Valley*, 117 Nev. at 959–60, 35 P.3d at 971 (finding that language “costs and damages” as used in NRCP 65(c) included the recovery of attorney fees); *Waddell v. L.V.R.V. Inc.*, 122 Nev. 15, 26–27, 125 P.3d 1160, 1167 (2006) (determining that term “any debt, damages or costs” as used in NRS 17.130(1) included attorney fees).

In the district court, the Board failed to provide any legal authority, whether from Nevada or other jurisdictions, to support its argument that attorney fees cannot be granted under NRS 34.270. JA 330. Even on appeal, the Board relies primarily on *Pardee Homes of Nev. v. Wolfram*, 135 Nev. 173, 444 P.3d 423 (2019),⁷ a case that is plainly inapposite. The core issue in *Pardee* involved whether, under the circumstances of that case, a district court erred in granting attorney fees as special damages under an *exception* to the American rule for fee-shifting, i.e., where no statute, rule, or contractual provision authorized such fees. *Pardee Homes*, 135 Nev. at 174, 444 P.3d at 424. Here, of course, NRS 34.270 provides a statutory basis for the award of attorney fees as part of the “damages” and “costs” that mandamus applicants incur. As such, *Pardee* is irrelevant in this case.

The Board’s reliance on 42 U.S.C. § 1988, which permits an award of costs to a prevailing plaintiff, is also misplaced. The Board emphasizes that Section 1988

⁷ The Board also relies on NRS 18.010, NRS 31.340, and NRS 239.170, claiming that those statutes refer to “attorney fees,” “costs,” and “damages” as separate concepts. Board Br. At 33. Again, the Board errs. NRS 239.170 does not refer to “attorney fees,” “costs,” or “damages” at all. NRS 18.010 does not refer to “damages” and makes clear that the provision is meant to supplement statutes that, unlike NRCP 65(c), NRS 17.130(1), and NRS 34.270, do not authorize the recovery of fees. NRS 18.010(2) (“In addition to cases where an allowance is authorized by specific statute, the court may make an allowance of attorney’s fees to a prevailing party.”). Finally, NRS 31.340 is limited to the context of garnishment and— similar to NRS 239.170—does not use the term “damages.”

expressly defines costs to include a “reasonable attorney’s fee.” Board Br. 34. But Section 1988’s coverage in this respect says nothing about Nevada law, or what to do when interpreting a statute like NRS 34.270 that does not expressly address attorney fees one way or the other. If anything, Section 1988 demonstrates that in some cases, “costs” are reasonably understood to include attorney’s fees. 42 U.S.C. § 1988(b) (authorizing “attorney’s fees as part of the costs”).

CONCLUSION

For the foregoing reasons, this Court should affirm the decisions below granting a writ of mandamus and declaratory relief and awarding attorney fees to Poole and CEIC.

DATED this 22nd day of September 2023.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I hereby certify that I have read this petition, and to the best of my knowledge, information, and belief it is not frivolous or interposed for any improper purpose. I further certify that this brief complies with all applicable Nevada Rules of Appellate Procedure, including the requirement of Rule 28(e), which requires that every assertion in the brief regarding matters in the record be supported by a reference to the page and volume number, if any, of the appendix where the matter relied on is to be found. I understand that I may be subject to sanctions in the event that the accompanying brief is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

I further certify that this brief complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5) and the type-style requirements of NRAP 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using Microsoft Word for Office 365 in 14-point Times New Roman.

Finally, I hereby certify that this brief complies with the type-volume limitations of NRAP 28(g) and 32(a)(7) because, excluding the parts of the brief exempted by NRAP 32(a)(7)(C), it is proportionately spaced, has a typeface of 14 points or more, and contains 9,735 words.

DATED September 22, 2023.

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CERTIFICATE OF SERVICE

I hereby certify that on September 22, 2023, I electronically filed the foregoing **RESPONDENTS’ ANSWERING BRIEF** with the Nevada Supreme Court by using the appellate electronic filing system.

Participants in the case who are registered with this Court’s electronic filing system will receive notice that the document has been filed and is available on the court’s electronic filing system. Electronic Service of the foregoing documents shall be made in accordance with the Master Service List as follows:

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ADDENDUM OF PROVISIONS INVOLVED

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Constitutional Provision

Art. 4, § 38. Use of plant of genus Cannabis for medical purposes

1. The legislature shall provide by law for:
 - (a) The use by a patient, upon the advice of his physician, of a plant of the genus Cannabis for the treatment or alleviation of cancer, glaucoma, acquired immunodeficiency syndrome; severe, persistent nausea of cachexia resulting from these or other chronic or debilitating medical conditions; epilepsy and other disorders characterized by seizure; multiple sclerosis and other disorders characterized by muscular spasticity; or other conditions approved pursuant to law for such treatment.
 - (b) Restriction of the medical use of the plant by a minor to require diagnosis and written authorization by a physician, parental consent, and parental control of the acquisition and use of the plant.
 - (c) Protection of the plant and property related to its use from forfeiture except upon conviction or plea of guilty or nolo contendere for possession or use not authorized by or pursuant to this section.
 - (d) A registry of patients, and their attendants, who are authorized to use the plant for a medical purpose, to which law enforcement officers may resort to verify a claim of authorization and which is otherwise confidential.
 - (e) Authorization of appropriate methods for supply of the plant to patients authorized to use it.
2. This section does not:
 - (a) Authorize the use or possession of the plant for a purpose other than medical or use for a medical purpose in public.
 - (b) Require reimbursement by an insurer for medical use of the plant or accommodation of medical use in a place of employment.

Key Statutes

NRS 453.005, Applicability of chapter to medical use of cannabis

The provisions of this chapter do not apply to the extent that they are inconsistent with the provisions of title 56 of NRS.

NRS 453.146, Powers and duties of Board

1. The Board shall administer the provisions of NRS 453.011 to 453.552, inclusive, and may add substances to or delete or reschedule all substances enumerated in schedules I, II, III, IV and V by regulation.
2. In making a determination regarding a substance, the Board shall consider the following:
 - (a) The actual or relative potential for abuse;
 - (b) The scientific evidence of its pharmacological effect, if known;
 - (c) The state of current scientific knowledge regarding the substance;
 - (d) The history and current pattern of abuse;
 - (e) The scope, duration and significance of abuse;
 - (f) The risk to the public health;
 - (g) The potential of the substance to produce psychic or physiological dependence liability; and
 - (h) Whether the substance is an immediate precursor of a controlled substance.
3. The Board may consider findings of the federal Food and Drug Administration or the Drug Enforcement Administration as prima facie evidence relating to one or more of the determinative factors.
4. After considering the factors enumerated in subsection 2, the Board shall make findings with respect thereto and adopt a regulation controlling the substance if it finds the substance has a potential for abuse.
5. The Board shall designate as a controlled substance a steroid or other product which is used to enhance athletic performance, muscle mass, strength or weight without medical necessity. The Board may not designate as a controlled substance an anabolic steroid which is:

- (a) Expressly intended to be administered through an implant to cattle, poultry or other animals; and
- (b) Approved by the Food and Drug Administration for such use.

NRS 453.166, Schedule I tests

The Board shall place a substance in schedule I if it finds that the substance:

1. Has high potential for abuse; and
2. Has no accepted medical use in treatment in the United States or lacks accepted safety for use in treatment under medical supervision.

NRS 453.211, Review, revision and dissemination of schedules

1. The Board shall:
 - (a) Review the schedules annually and maintain a list of current schedules.
 - (b) Upon the revision of a schedule, cause a copy of the revised schedule to be sent to each district attorney, public defender and judge in the State of Nevada.
 - (c) Make copies of the list of current schedules available to members of the public upon request. The Board may charge a reasonable fee for providing the copies.
2. Failure to publish revised schedules is not a defense in any administrative or judicial proceeding under NRS 453.011 to 453.552, inclusive.

NRS 453.2182, Treatment by Board when substance is designated, rescheduled or deleted as controlled substance by federal law

If a substance is designated, rescheduled or deleted as a controlled substance pursuant to federal law, the Board shall similarly treat the substance pursuant to the provisions of NRS 453.011 to 453.552, inclusive, after the expiration of 60 days from publication in the Federal Register of a final order designating a substance as a controlled substance or rescheduling or deleting a substance or from the date of issuance of an order of temporary scheduling under Section 508 of the federal Dangerous Drug Diversion Control Act of 1984, 21 U.S.C. § 811(h), unless within the 60-day period, the Board or an interested party objects to the treatment of the substance. If no objection is made, the Board shall adopt, without making the determinations or findings required by subsections 1 to 4, inclusive, of NRS 453.146 or NRS 453.166, 453.176, 453.186, 453.196 or 453.206, a final regulation treating the substance. If an objection is made, the Board shall make a determination with respect to the treatment of the substance as provided by subsections 1 to 4, inclusive, of NRS 453.146. Upon receipt of an objection to the treatment by the Board, the Board shall publish notice of the receipt of the objection, and action by the Board is stayed until the Board adopts a regulation as provided by subsection 4 of NRS 453.146.

NRS 453.321, Offer, attempt or commission of unauthorized act relating to controlled or counterfeit substance unlawful; penalties; prohibition against probation or suspension of sentence for certain repeat offenders unless mitigating circumstances exist

1. Except as authorized by the provisions of NRS 453.011 to 453.552, inclusive, it is unlawful for a person to:
 - (a) Import, transport, sell, exchange, barter, supply, prescribe, dispense, give away or administer a controlled or counterfeit substance;
 - (b) Manufacture or compound a counterfeit substance; or
 - (c) Offer or attempt to do any act set forth in paragraph (a) or (b).
2. Unless a greater penalty is provided in NRS 453.333 or 453.334, if a person violates subsection 1 and the controlled substance is classified in schedule I or II, the person shall be punished:
 - (a) For the first offense, for a category C felony as provided in NRS 193.130.
 - (b) For a second offense, or if, in the case of a first conviction under this subsection, the offender has previously been convicted of an offense under this section or of any offense under the laws of the United States or any state, territory or district which, if committed in this State, would amount to an offense under this section, for a category B felony by imprisonment in the state prison for a minimum term of not less than 2 years and a maximum term of not more than 10 years, and may be further punished by a fine of not more than \$20,000.
 - (c) For a third or subsequent offense, or if the offender has previously been convicted two or more times under this section or of any offense under the laws of the United States or any state, territory or district which, if committed in this State, would amount to an offense under this section, for a category B felony by imprisonment in the state prison for a minimum term of not less than 3 years and a maximum term of not more than 15 years, and may be further punished by a fine of not more than \$20,000 for each offense.

3. Unless mitigating circumstances exist that warrant the granting of probation, the court shall not grant probation to or suspend the sentence of a person convicted under subsection 2 and punishable pursuant to paragraph (b) or (c) of subsection 2.
4. Unless a greater penalty is provided in NRS 453.333 or 453.334, if a person violates subsection 1, and the controlled substance is classified in schedule III, IV or V, the person shall be punished:
 - (a) For the first offense, for a category D felony as provided in NRS 193.130.
 - (b) For a second offense, or if, in the case of a first conviction of violating this subsection, the offender has previously been convicted of violating this section or of any offense under the laws of the United States or any state, territory or district which, if committed in this State, would amount to a violation of this section, for a category C felony as provided in NRS 193.130.
 - (c) For a third or subsequent offense, or if the offender has previously been convicted two or more times of violating this section or of any offense under the laws of the United States or any state, territory or district which, if committed in this State, would amount to a violation of this section, for a category B felony by imprisonment in the state prison for a minimum term of not less than 2 years and a maximum term of not more than 10 years, and may be further punished by a fine of not more than \$15,000 for each offense.
5. Unless mitigating circumstances exist that warrant the granting of probation, the court shall not grant probation to or suspend the sentence of a person convicted under subsection 4 and punishable pursuant to paragraph (b) or (c) of subsection 4.

NRS 453.336, Unlawful possession not for purpose of sale: Prohibition; penalties; exception

1. Except as otherwise provided in subsection 6, a person shall not knowingly or intentionally possess a controlled substance, unless the substance was obtained directly from, or pursuant to, a prescription or order of a physician, physician assistant licensed pursuant to chapter 630 or 633 of NRS, dentist, podiatric physician, optometrist, advanced practice registered nurse or veterinarian while acting in the course of his or her professional practice, or except as otherwise authorized by the provisions of NRS 453.005 to 453.552, inclusive.
2. Except as otherwise provided in subsections 3, 4 and 5 and in NRS 453.3363, and unless a greater penalty is provided in NRS 212.160, 453.3385 or 453.339, a person who violates this section:
 - (a) For a first or second offense, if the controlled substance is listed in schedule I or II and the quantity possessed is less than 14 grams, or if the controlled substance is listed in schedule III, IV or V and the quantity possessed is less than 28 grams, is guilty of possession of a controlled substance and shall be punished for a category E felony as provided in NRS 193.130. In accordance with NRS 176.211, the court shall defer judgment upon the consent of the person.
 - (b) For a third or subsequent offense, if the controlled substance is listed in schedule I or II and the quantity possessed is less than 14 grams, or if the controlled substance is listed in schedule III, IV or V and the quantity possessed is less than 28 grams, or if the offender has previously been convicted two or more times in the aggregate of any violation of the law of the United States or of any state, territory or district relating to a controlled substance, is guilty of possession of a controlled substance and shall be punished for a category D felony as provided in NRS 193.130, and may be further punished by a fine of not more than \$20,000.
 - (c) If the controlled substance is listed in schedule I or II and the quantity possessed is 14 grams or more, but less than 28 grams, or if the controlled substance is listed in schedule III, IV or V and the quantity possessed is 28 grams or more, but less than 200 grams, is guilty of

low-level possession of a controlled substance and shall be punished for a category C felony as provided in NRS 193.130.

- (d) If the controlled substance is listed in schedule I or II and the quantity possessed is 28 grams or more, but less than 42 grams, or if the controlled substance is listed in schedule III, IV or V and the quantity possessed is 200 grams or more, is guilty of mid-level possession of a controlled substance and shall be punished for a category B felony by imprisonment in the state prison for a minimum term of not less than 1 year and a maximum term of not more than 10 years and by a fine of not more than \$50,000.
 - (e) If the controlled substance is listed in schedule I or II and the quantity possessed is 42 grams or more, but less than 100 grams, is guilty of high-level possession of a controlled substance and shall be punished for a category B felony by imprisonment in the state prison for a minimum term of not less than 2 years and a maximum term of not more than 15 years and by a fine of not more than \$50,000.
3. Unless a greater penalty is provided in NRS 212.160, 453.337 or 453.3385, a person who is convicted of the possession of flunitrazepam or gamma-hydroxybutyrate, or any substance for which flunitrazepam or gamma-hydroxybutyrate is an immediate precursor, is guilty of a category B felony and shall be punished by imprisonment in the state prison for a minimum term of not less than 1 year and a maximum term of not more than 6 years.
4. Unless a greater penalty is provided pursuant to NRS 212.160, a person who is convicted of the possession of 1 ounce or less of marijuana is guilty of a misdemeanor and shall be punished by:
- (a) Performing not more than 24 hours of community service;
 - (b) Attending the live meeting described in paragraph (a) of subsection 2 of NRS 484C.530 and complying with any other requirements set forth in that section; or
 - (c) Being required to undergo an evaluation in accordance with subsection 1 of NRS 484C.350, or any combination thereof.

5. Unless a greater penalty is provided pursuant to NRS 212.160, a person who is convicted of the possession of more than 1 ounce, but less than 50 pounds, of marijuana or more than one-eighth of an ounce, but less than one pound, of concentrated cannabis is guilty of a category E felony and shall be punished as provided in NRS 193.130.
6. It is not a violation of this section if a person possesses a trace amount of a controlled substance and that trace amount is in or on a hypodermic device obtained from a sterile hypodermic device program pursuant to NRS 439.985 to 439.994, inclusive.
7. The court may grant probation to or suspend the sentence of a person convicted of violating this section.
8. If a person fulfills the terms and conditions imposed for a violation of subsection 4, the court shall, without a hearing, order sealed all documents, papers and exhibits in that person's record, minute book entries and entries on dockets, and other documents relating to the case in the custody of such other agencies and officers as are named in the court's order. The court shall cause a copy of the order to be sent to each agency or officer named in the order. Each such agency or officer shall notify the court in writing of its compliance with the order.
9. As used in this section:
 - (a) "Controlled substance" includes flunitrazepam, gamma-hydroxybutyrate and each substance for which flunitrazepam or gamma-hydroxybutyrate is an immediate precursor.
 - (b) "Marijuana" does not include concentrated cannabis.
 - (c) "Sterile hypodermic device program" has the meaning ascribed to it in NRS 439.986.

NRS 639.070, General powers; regulation

1. The Board may:

- (a) Adopt such regulations, not inconsistent with the laws of this State, as are necessary for the protection of the public, appertaining to the practice of pharmacy and the lawful performance of its duties.
- (b) Adopt regulations requiring that prices charged by retail pharmacies for drugs and medicines which are obtained by prescription be posted in the pharmacies and be given on the telephone to persons requesting such information.
- (c) Adopt regulations, not inconsistent with the laws of this State, authorizing the Executive Secretary of the Board to issue certificates, licenses and permits required by this chapter and chapters 453 and 454 of NRS.
- (d) Adopt regulations governing the dispensing of poisons, drugs, chemicals and medicines.
- (e) Regulate the practice of pharmacy.
- (f) Regulate the sale and dispensing of poisons, drugs, chemicals and medicines.
- (g) Regulate the means of recordkeeping and storage, handling, sanitation and security of drugs, poisons, medicines, chemicals and devices, including, but not limited to, requirements relating to:
 - (1) Pharmacies, institutional pharmacies and pharmacies in correctional institutions;
 - (2) Drugs stored in hospitals; and
 - (3) Drugs stored for the purpose of wholesale distribution.
- (h) Examine and register, upon application, pharmacists and other persons who dispense or distribute medications whom it deems qualified.

- (i) Charge and collect necessary and reasonable fees for the expedited processing of a request or for any other incidental service the Board provides, other than those specifically set forth in this chapter.
 - (j) Maintain offices in as many localities in the State as it finds necessary to carry out the provisions of this chapter.
 - (k) Employ attorneys, inspectors, investigators and other professional consultants and clerical personnel necessary to the discharge of its duties.
 - (l) Enforce the provisions of NRS 453.011 to 453.552, inclusive, and enforce the provisions of this chapter and chapter 454 of NRS.
 - (m) Adopt regulations concerning the information required to be submitted in connection with an application for any license, certificate or permit required by this chapter or chapter 453 or 454 of NRS.
 - (n) Adopt regulations concerning the education, experience and background of a person who is employed by the holder of a license or permit issued pursuant to this chapter and who has access to drugs and devices.
 - (o) Adopt regulations concerning the use of computerized mechanical equipment for the filling of prescriptions.
 - (p) Participate in and expend money for programs that enhance the practice of pharmacy.
 - (q) Enter into written agreements with local, state and federal agencies for the purpose of improving the enforcement of and compliance with the provisions of this chapter and chapters 453 and 454 of NRS.
 - (r) Contract with a private entity to administer the database of the program established pursuant to NRS 453.162.
2. The Board shall, to the extent feasible, communicate or cooperate with or provide any documents or other information to any other licensing board or

any other agency that is investigating a person, including, without limitation, a law enforcement agency.

3. This section does not authorize the Board to prohibit open-market competition in the advertising and sale of prescription drugs and pharmaceutical services.

NRS 34.270. Recovery of damages by applicant; execution may issue to enforce judgment

If judgment be given for the applicant, the applicant shall recover the damages which the applicant shall have sustained as found by the jury, or as may be determined by the court or master, upon a reference to be ordered, together with costs; and for such damages and costs an execution may issue, and a peremptory mandate shall also be awarded without delay.

Regulations

NAC 453.510 Schedule I

1. Schedule I consists of the drugs and other substances listed in this section by whatever official, common, usual, chemical or trade name designated.

...

4. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture or preparation which contains any quantity of the following hallucinogenic substances, including, without limitation, their salts, isomers and salts of isomers, whenever the existence of such salts, isomers and salts of isomers is possible within the specific chemical designation:

Adinazolam (some trade or other names: 8-chloro-1-((dimethylamino)methyl)-6-phenyl-4H-s-triazolo(4,3-a)(1,4)benzodiazepine; adinazolamum; Deracyn);

Alpha-ethyltryptamine (some trade or other names: ET, Trip);

Alpha-methyltryptamine (some trade or other names: AMT);

Bromazolam (some trade or other names: 8-bromo-1-methyl-6-phenyl-4H[1,2,4]triazolo[4,3-a][1,4]benzodiazepine; XLI-268);

1,4-Butanediol (some trade or other names: 1,4-butyleneglycol, dihydroxybutane, tetramethylene glycol, butane 1,4-diol, SomatoPro, Soma Solutions, Zen);

4-bromo-2,5-dimethoxyamphetamine (some trade or other names: 4-bromo-2,5-dimethoxy-alpha-methylphenethylamine; 4-bromo-2,5-DMA);

4-bromo-2,5-dimethoxyphenethylamine (some trade or other names: Nexus, 2C-B);

1-Butyl-3-(1-naphthoyl)indole-7173 (some trade or other names: JWH-073);

2-(4-Chloro-2,5-dimethoxyphenyl)ethanamine (some trade or other names: 2C-C);

4-(2-chlorophenyl)-2-ethyl-9-methyl-6H-thieno[3,2-f][1,2,4]triazolo[4,3-a][1,4]diazepine (some trade or other names: Etizolam);

Clonazolam (some trade or other names: 6-(2-chlorophenyl)-1-methyl-8-nitro-4H-[1,2,4]triazolo[4,3-a][1,4]benzodiazepine; clonitrazolam);

1-cyclohexylethyl-3-(2-methoxyphenylacetyl)indole (some trade or other names: SR-18; BTM-8; RCS-8);

Diclazepam (some trade or other names: 7-chloro-5-(2-chlorophenyl)-1,3-dihydro-1-methyl-2H-1,4-benzodiazepin-2-one; 7-chloro-5-(2-chlorophenyl)-1-methyl-1,3-dihydro-2H-benzo[e][1,4]diazepin-2-one; 2'-chlorodiazepam; Chlorodiazepam; Ro 5-3448);

2,5-dimethoxyamphetamine (some trade or other names: 2,5-dimethoxy-alpha-methylphenethylamine; 2,5-DMA);

2,5-dimethoxy-4-ethylamphetamine (some trade or other names: DOET);

2-(2,5-Dimethoxy-4-ethylphenyl)ethanamine (some trade or other names: 2C-E);

2-(2,5-Dimethoxy-4-methylphenyl)ethanamine (some trade or other names: 2C-D);

2-(2,5-Dimethoxy-4-nitro-phenyl)ethanamine (some trade or other names: 2C-N);

2,5-Dimethoxy-N-(2-methoxybenzyl) phenethylamine (NBOMe) and any derivative thereof (some trade or other names: 2C-X-NBOMe; N-benzylated phenethylamines; N-o-methoxybenzyl analogs; NBOMe; 25H-NBOMe; 25B-NBOMe; 25C-NBOMe; 25D-NBOMe; 25E-NBOMe; 25I-NBOMe; 25N-NBOMe; 25P-NBOMe; 25T2-NBOMe; 25T4-NBOMe; 25T7-NBOMe);

2-(2,5-Dimethoxy-4-(n)-propylphenyl)ethanamine (some trade or other names: 2C-P);

2,5-dimethoxy-4-(n)-propylthiophenethylamine (some trade or other names: 2C-T-7);

2-(2,5-Dimethoxyphenyl)ethanamine (some trade or other names: 2C-H);

3-[(2-Dimethylamino)ethyl]-1H-indol-4-yl acetate (some trade or other names: 4-acetoxy-N, N-dimethyltryptamine; 4-AcO-DMT; psilacetin; O-acetylpsilocin; 4-acetoxy-DMT);

5-(1,1-Dimethylheptyl)-2-[(1R,3S)-3-hydroxycyclohexyl]-phenol-7297 (some trade or other names: CP-47,497);

5-(1,1-Dimethyloctyl)-2-[(1R,3S)-3-hydroxycyclohexyl]-phenol-7298 (some trade or other names: cannabicyclohexanol; CP-47,497 C8 homologue);

Ethyl 2-(1-(5-fluoropentyl)-1H-indazole-3-carboxamido)-3,3-dimethylbutanoate (some trade or other names: 5F-EDMB-PINACA);

4-ethylnaphthalen-1-yl-(1-pentylindol-3-yl)methanone (some trade or other names: (4-ethyl-1-naphthalenyl)(1-pentyl-1H-indol-3-yl)-methanone; JWH-210);

2-[4-(Ethylthio)-2,5-dimethoxyphenyl]ethanamine (some trade or other names: 2C-T-2);

Flualprazolam (some trade or other names: 8-chloro-6-(2-fluorophenyl)-1-methyl-4H-[1,2,4]triazolo[4,3-a][1,4]benzodiazepine; 8-chloro-6-(2-fluoro-phenyl)-1-methyl-4h-benzo[f][1,2,4]triazolo[4,3-a][1,4]diazepine; 2'-fluoro alprazolam; ortho-fluoro alprazolam);

Flubromazepam (some trade or other names: 7-bromo-5-(2-fluorophenyl)-1,3-dihydro-2H-1,4-benzodiazepin-2-one; 7-Bromo-5-(2-fluorophenyl)-1H-benzo[e][1,4]diazepin-2(3H)-one; 7-bromo-5-(2-fluorophenyl)-1,3-dihydro-1,4-benzodiazepin-2-one);

Flubromazolam (some trade or other names: 8-bromo-6-(2-fluorophenyl)-1-methyl-4H-(1,2,4)triazolo(4,3-a)(1,4)benzodiazepine);

Flunitrazolam (some trade or other names: 6-(2-fluorophenyl)-1-methyl-8-nitro-4H-benzo[f][1,2,4]triazolo[4,3-a][1,4]diazepine);

(1-(4-fluorobenzyl)-1H-indol-3-yl)(2,2,3,3-tetramethylcyclopropyl)methanone (some trade or other names: FUB-144);

2-(1-(4-fluorobenzyl)-1H-indazole-3-carboxamido)-3-methylbutanoate (Some trade or other names: FUB-AMB; MMB-FUBINACA);

[1-(5-fluoropentyl)-1H-indazol-3-yl](naphthalen-1-yl)methanone (some trade or other names: THJ-2201; 5-fluoro THJ 018; AM2201 indazole analog; fluorpentyl JWH-018 indazole);

[1-(5-fluoropentyl)-1H-indol-3-yl]-1-naphthalenyl-methanone (some trade or other names: 1-(5-fluoropentyl)-3-(1-naphthoyl)indole; AM-2201);

[1-(5-fluoropentyl)-1H-indol-3-yl]-(2-iodophyenyyl)-methanone (some trade or other names: 1-(5-fluoropentyl)-3-(2-iodobenzoyl)indole; AM-694);

(1-(5-fluoropentyl)-1H-indol-3-yl)(2,2,3,3-tetramethylcyclopropyl)methanone (some trade or other names: XLR-11);

1-(5-fluoropentyl)-N-(2-phenylpropan-2-yl)-1H-indazole-3-carboxamide (some trade or other names: 5F-CUMYL-PINACA; SGT-25);

1-(5-fluoropentyl)-N-(tricyclo[3.3.1.1^{3,7}]dec-1-yl)-1H-indazole-3-carboxamide (some trade or other names: N-((3s,5s,7s)-adamantan-1-yl)-1-(5-fluoropentyl)-1H-indazole-3-carboxamide; APINACA 5-fluoropentyl analog; 5F-AKB48; 5-Fluoro-AKB48; 5F-APINACA; 5-Fluoro-APINACA);

1-(5-fluoropentyl)-8-quinolinyl ester-1H-indole-3-carboxylic acid (some trade or other names: 1-(5-fluoropentyl)-1H-indole-3-carboxylic acid 8-quinolinyl ester; 5-Fluoro-PB-22; 5F-PB-22);

Flutoprazepam (some trade or other names: 7-chloro-1-(cyclopropylmethyl)-5-(2-fluorophenyl)-1,3-dihydro-2H-1,4-benzodiazepin-2-one);

2-(4-Iodo-2,5-dimethoxyphenyl)ethanamine (some trade or other names: 2C-I);

2-[4-(Isopropylthio)-2,5-dimethoxyphenyl]ethanamine (some trade or other names: 2C-T-4);

1-hexyl-3-(1-naphthoyl)indole (some trade or other names: JWH-019);

Meclonazepam (some trade or other names: (3S)-5-(2-chlorophenyl)-1,3-dihydro-3-methyl-7-nitro-2H-1,4-benzodiazepin-2-one; Ro 11-3128);

Methoxetamine (some trade or other names: MXE; 2-(3-methoxyphenyl)-2-(ethylamino)cyclohexanone)

4-methoxyamphetamine (some trade or other names: 4-methoxy-alpha-methylphenethylamine; para-methoxyamphetamine; PMA);

(4-methoxy-1-naphthalenyl)(1-pentyl-1H-indol-3-yl)-methanone (some trade or other names: JWH-081);

5-methoxy-3,4-methylenedioxyamphetamine (some trade or other names: MMDA);

5-methoxy-N, N-diisopropyltryptamine (some trade or other names: 5-meO-DIPT);

4-methyl-2,5-dimethoxyamphetamine (some trade or other names: 4-methyl-2,5-dimethoxy-alpha-methylphenethylamine; “DOM”; “STP”);

(4-methyl-1-naphthalenyl)(1-pentyl-1H-indol-3-yl)-methanone (some trade or other names: JWH-122);

Methyl 2-(1-(5-fluoropentyl)-1H-indazole-3-carboxamido)-3,3-dimethylbutanoate (some trade or other names: 5F-ADB; 5F-MDMB-PINACA);

Methyl 2-(1-(5-fluoropentyl)-1H-indole-3-carboxamido)-3,3-dimethylbutanoate (some trade or other names: 5F-MDMB-PICA);

Methylenedioxyamphetamine (some trade or other names: MDA);

Methylenedioxyamphetamine (MDMA);
 Methylenedioxy-N-ethylamphetamine (commonly referred to as N-ethyl-alpha-methyl-3,4(methylenedioxy) phenethylamine, N-ethyl MDA, MDE, MDEA);
 1-[2-(4-Morpholinyl)ethyl]-3-(1-naphthoyl)indole-7200 (some trade or other names: JWH-200);
 N-(adamantan-1-yl)-1-(4-fluorobenzyl)-1H-indazole-3-carboxamide (some trade or other names: FUB-AKB48; FUB-APINACA; AKB48 N-(4-fluorobenzyl));
 N-(1-adamantyl)-1-pentyl-1H-indazole-3-carboxamide (some trade or other names: 1-pentyl-N-tricyclo[3.3.1.1^{3,7}]dec-1-yl-1H-indazole-3-carboxamide; APINACA; AKB48);
 N-(1-amino-3,3-dimethyl-1-oxobutan-2-yl)-1-(cyclohexylmethyl)-1H-indazole-3-carboxamide (trade or other names: ADB-CHMINACA; MAB-CHMINACA);
 N-(1-amino-3,3-dimethyl-1-oxobutan-2-yl)-1-pentyl-1H-indazole-3-carboxamide (trade or other name: ADB-PINACA);
 N-(1-amino-3-methyl-1-oxobutan-2-yl)-1-pentyl-1H-indazole-3-carboxamide (some trade or other names: AB-PINACA);
 N-(1-amino-3-methyl-1-oxobutan-2-yl)-1-(4-fluorobenzyl)-1H-indazole-3-carboxamide (trade or other name: AB-FUBINACA);
 N-[(1S)-1-(aminocarbonyl)-2-methylpropyl]-1-(cyclohexylmethyl)-1H-indazole-3-carboxamide (trade or other name: AB-CHMINACA);
 N-hydroxy-3,4-methylenedioxyamphetamine (commonly referred to as N-hydroxy-alpha-methyl-3,4(methylenedioxy) phenethylamine, N-hydroxy MDA);
 2-(2-methoxyphenyl)-1-(1-pentylindol-3-yl)ethanone (some trade or other names: 1-(1-pentyl-1H-indol-3-yl)-2-(2-methoxyphenyl)ethanone; 1-pentyl-3-(2-methoxyphenylacetyl)indole; JWH-250);
 Nifoxipam (some trade or other names: 5-(2-fluorophenyl)-1,3-dihydro-3-hydroxy-7-nitro-2H-1,4-benzodiazepin-2-one; 1,3-Dihydro-5-(2-fluorophenyl)-3-hydroxy-7-nitro-2H-1,4-benzodiazepin-2-one; 3-hydroxydesmethylflunitrazepam; DP 370);
 Nitrazolam (some trade or other names: 1-methyl-8-nitro-6-phenyl-4H-[1,2,4]triazolo[4,3-a][1,4]benzodiazepine);
 Norflurazepam (some trade or other names: 7-chloro-5-(2-fluorophenyl)-1,3-dihydro-2H-1,4-benzodiazepin-2-one; nor-Flurazepam; N-Desalkylflurazepam; Desalkylflurazepam; Ro 5-3367);
 1-Pentyl-3-(2-chlorophenylacetyl)indole (some trade or other names: JWH-203);

1-Pentyl-3-(4-cholor-1-naphthoyl)indole (some trade or other names: JWH-398);

1-Pentyl-3-[(4-methoxy)-benzoyl]indole (some trade or other names: SR-19; BTM-4; RCS-4);

1-Pentyl-3-(1-naphthoyl)indole-7118 (some trade or other names: JWH-018; AM678);

(1-pentylindol-3-yl)-(2,2,3,3-tetramethylcyclopropyl)methanone (some trade or other names: UR-144);

1-pentyl-N-(tricyclo[3.3.1.1^{3,7}]dec-1-yl-1H-indole-3 carboxamide (some trade or other names: APICA; JWH-018 adamantyl carboxamide; 2NE1; SDB-001);

1-pentyl-8-quinolinyl ester-1H-indole-3-carboxylic acid (some trade or other names: 1-pentyl-1H-indole-3-carboxylic acid 8-quinolinyl ester; PB-22; QUPIC);

Phenazepam (some trade or other names: 7-bromo-5-(2-chlorophenyl)-1,3-dihydro-2H-1,4-benzodiazepin-2-one; 7-bromo-5-(2-chlorophenyl)-1,2-dihydro-3H-1,4-benzodiazepin-2-one; BD 98; Fenazepam; Elzepam; Phezepam; Phenorelaxan; Phenzitat);

Pyrazolam (some trade or other names: 8-bromo-1-methyl-6-(2-pyridinyl)-4H-(1,2,4)triazolo(4,3-a)(1,4)benzodiazepine; 8-bromo-1-methyl-6-(pyridin-2-yl)-4H-benzo[f][1,2,4]triazolo[4,3-a][1,4]diazepine; Pirazolam);

3,4,5-trimethoxyamphetamine;

Bufotenine (some trade or other names: 3-(beta-dimethylaminoethyl)-5-hydroxyindole; 3-(2-dimethyl-aminoethyl)-5-indolol; N, N-dimethylserotonin; 5-hydroxy-N, N-dimethyltryptamine; mappine);

Diethyltryptamine (some trade or other names: DET; N,N-Diethyltryptamine);

Dimethyltryptamine (some trade or other names: DMT; N,N-DMT; N,N-Dimethyltryptamine);

Fluorophenylpiperazine (some trade or other names: FPP, pFPP, 2-fluorophenylpiperazine, 3-fluorophenylpiperazine, 4-fluorophenylpiperazine);

Gamma butyrolactone (some trade or other names: GBL, Gamma Buty Lactone, 4-butyrolactone, dihydro-2(3H)-furanone, tetrahydro-2-furanone, Gamma G, GH Gold);

Gamma hydroxy butyric acid (some trade or other names: GHB);

Ibogaine (some trade or other names: 7-ethyl-6, 6 beta, 7, 8, 9, 10, 12, 13-octahydro-2-methoxy-6, 9-methano-5H-pyrido (1',2':1,2) azepino (5,4-b) indole; Tabernanthe iboga);

Lysergic acid diethylamide;
Marijuana;
Mescaline;
Methoxyphenylpiperazine (some trade or other names: MeOPP, pMPP, 4-MPP, 2-MeOPP, 3-MeOPP, 4-MeOPP);
Parahexyl (some trade or other names: 3-Hexyl-1-hydroxy-7, 8, 9, 10-tetrahydro-6,6,9-trimethyl-6H-dibenzo[b,d]pyran; Synhexyl);
Peyote (meaning all parts of the plant presently classified botanically as *Lophophora williamsii* Lemaire, whether growing or not, the seeds thereof, any extract from any part of such plant, and every compound, manufacture, salts, derivative, mixture, or preparation of such plant, its seeds or extracts);
N-benzylpiperazine (some trade or other names: BZP, 1-benzylpiperazine);
N-ethyl-3-piperidyl benzilate;
N-methyl-3-piperidyl benzilate;
Psilocybin;
Psilocin;
Salvinorin A (some trade or other names: Divinorin A; Methyl (2S,4aR,6aR,7R,9S,10aS,10bR)-9-(acetyloxy)-2-(furan-3-yl)-6a,10b-dimethyl-4,10-dioxododecahydro-2H-benzo[f]isochromene-7-carboxylate);
Ethylamine analog of phencyclidine (some trade or other names: N-ethyl-1-phenylcyclohexylamine; (1-phenylcyclohexyl) ethylamine; N-(1-phenylcyclohexyl) ethylamine; cyclohexamine; PCE);
Pyrrolidine analog of phencyclidine (some trade or other names: 1-(1-phenylcyclohexyl)-pyrrolidine; PCPy; PHP);
1-(1-(2-thienyl)-cyclohexyl)-pyrrolidine (some trade or other names: TCPy);
Thiophene analog of phencyclidine (some trade or other names: 1-(1-(2-thienyl)-cyclohexyl)-piperidine; 2-thienyl analog of phencyclidine; TPCP; TCP); or
Trifluoromethylphenylpiperazine (some trade or other names: 1-(3-trifluoromethylphenyl)piperazine; 3-trifluoromethylphenylpiperazine; TFMPP).

For the purposes of this subsection, “isomer” includes, without limitation, the optical, position or geometric isomer.