

Joe Lombardo
Governor



Richard Whitley,
MS
Director



Cody Phinney,
MPH
Administrator

Ihsan Azzam,
Ph.D., M.D.
Chief Medical
Officer

NOTICE OF PUBLIC HEARING

VEGAS STRONGER, 840 S. RANCHO DR., #4323, LAS VEGAS, NV 89106, IS REQUESTING A VARIANCE, #751, FROM THE NEVADA STATE BOARD OF HEALTH REGULATIONS.

NOTICE IS HEREBY GIVEN THAT VEGAS STRONGER, 840 S. RANCHO DR., 4323, LAS VEGAS, NV 89106 has requested a variance from Nevada Administrative Code (NAC)499.013(1)i.

A public hearing will be conducted on September 1, 2023, at 9:00 am by the Nevada State Board of Health to consider this request. This meeting will be held online and at physical locations, listed below.

Physical Locations:

Southern Nevada Health District (SNHD)
Red Rock Trail Rooms A and B
280 S. Decatur Boulevard; Las Vegas, Nevada 89107

Nevada Division of Public and Behavioral Health (DPBH)
Hearing Room No. 303, 3rd Floor
4150 Technology Way; Carson City, Nevada 89706

Meeting Link:

https://teams.microsoft.com/l/meetup-join/19%3ameeting_N2E0OWNkNzUtNGU2NC00NjJlLTk0NTEtODRmZDIyZjFhNjRI%40thread.v2/0?context=%7b%22id%22%3a%22e4a340e6-b89e-4e68-8eaa-1544d2703980%22%2c%22oid%22%3a%22faba961c-6d7e-488b-8c7c-60c19eff2cbd%22%7d

Please Note: If you experience technical difficulties connecting online, please call into the meeting to participate by phone.

Join by Phone:

1-775-321-6111

Phone Conference ID Number: 196 838 95#

Vegas Stronger, 840 S. Rancho Dr., #4323, Las Vegas, NV 89106, is requesting a variance from NAC 449.013(1)i which states, in relevant part:

1. Except as otherwise provided in [NAC 449.0168](#), an applicant for a license to operate any of the following facilities, programs of hospice care or agencies must pay to the Division of Public and Behavioral Health the following nonrefundable fees:

[...]

(i) A facility for treatment with narcotics \$ 5,046”

Further, NAC 449.013(3) states:

“An application for a license is valid for 1 year after the date on which the application is submitted. If an applicant does not meet the requirements for licensure imposed by [chapter 449](#) of NRS or the regulations adopted pursuant thereto within 1 year after the date on which the applicant submits his or her application, the applicant must submit a new application and pay the required fee to be considered for licensure.”

The applicant, Vegas Stronger, initially filed an application with the Bureau of Health Care Quality and Compliance (HCQC) for licensure as a facility for treatment with narcotics on 12/20/21 and paid the associated fee of \$5046. John Seeland, an employee of Vegas Stronger, began the application process for this facility, listing himself as the primary contact on the application. John Seeland who received the emails no longer worked for Vegas Stronger. Vegas Stronger had not received any notices from the DPBH until the denial letter was received. Vegas Stronger was requesting a fee variance due to limited funds as a non-profit organization. The applicant would like to apply again for the facility and have the application fee waived.

The authority of the State Board of Health to consider and grant a variance from the requirements of a regulation is set forth at NRS 439.200 and NAC 439.200 – 439.280.

[Persons wishing to comment upon the proposed variance may appear at the scheduled public hearing or may submit written testimony at least five days before the scheduled hearing to:](#)

Secretary, State Board of Health
Division of Public and Behavioral Health
4150 Technology Way, Suite 300
Carson City, NV 89706

Anyone wishing to testify for more than five minutes on the proposed variance must petition the Board of Health at the above address. Petitions shall contain the following: 1) a concise statement of the subject(s) on which the petitioner will present testimony; 2) the estimated time for the petitioner’s presentation.

This notice has also been posted at the following locations:

DIVISION OF PUBLIC AND BEHAVIORAL HEALTH (DPBH), 4150 TECHNOLOGY WAY, CARSON CITY, NV

DIVISION OF PUBLIC AND BEHAVIORAL HEALTH BOARD OF HEALTH WEBSITE:

<http://dpbh.nv.gov/Boards/BOH/Meetings/Meetings/>

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DEPARTMENT OF
HEALTH AND HUMAN SERVICES



NEVADA DIVISION of PUBLIC
and BEHAVIORAL HEALTH



Cody Phinney,
MPH
Administrator

Ihsan Azzam,
Ph.D., M.D.
Chief Medical
Officer

JULY 18, 2023

Memorandum

To: Jon Pennell, DVM, Chairperson
State Board of Health

From: Cody Phinney, Administrator
Division of Public and Behavioral Health

RE: David Marlon, Vegas Stronger, Variance request to not pay a fee for licensure.

Subject: Case #751 - David Marlon, President, Vegas Stronger, request for Variance to Nevada Administrative Code (NAC) NAC 449.013(1)(i)

Staff Review:

Variance applicant David Marlon, on behalf of Vegas Stronger, has submitted an application for variance, requesting waiver of Nevada Administrative Code (NAC) 449.013(1)(i), relating to the fee requirement associated with an application for a facility for treatment with narcotics. Staff recommends that the Board of Health deny this variance request, as no undue hardship has been demonstrated.

Reference codes include:

NAC 449.013(1)(i) states, "1. Except as otherwise provided in [NAC 449.0168](#), an applicant for a license to operate any of the following facilities, programs of hospice care or agencies must pay to the Division of Public and Behavioral Health the following nonrefundable fees:

(i) A facility for treatment with narcotics \$ 5,046"

Further, NAC 449.013(3) states, "An application for a license is valid for 1 year after the date on which the application is submitted. If an applicant does not meet the requirements for licensure imposed by [chapter 449](#) of NRS or the regulations adopted pursuant thereto within 1 year after the date on which the applicant submits his or her application, the applicant must submit a new application and pay the required fee to be considered for licensure."

Background:

The applicant, Vegas Stronger, initially filed an application with the Bureau of Health Care Quality and Compliance (HCQC) for licensure as a facility for treatment with narcotics on 12/20/21 and paid the associated

fee of \$5046. John Seeland, an employee of Vegas Stronger, began the application process for this facility, listing himself as the primary contact on the application. Mr. Seeland corresponded with the licensure unit on 1/27/22 regarding the length of time the “fee payment and application were good for.” The licensure unit replied stating that one year after submission, another initial fee would be required. There was little to no activity in the online application by Mr. Seeland. The licensure unit continued to alert the applicant representative that documents needed to be uploaded for completion. The dates of email communication were 1/27/22, 1/28/22, 5/26/22, and 11/8/22, with no response from the applicant.

On 3/2/23 and 3/7/23, Vegas Stronger President David Marlon and his representative Heather Fisher, reached out to the licensing unit to inquire about proceeding with the application. They were informed that the application had expired, and a new fee was required to reactivate the application. This process was described in detail; however, no further contact was received from the applicants. A denial letter was sent to the applicants on 5/25/23, as the application has been expired for nearly six months. Upon receiving notice of denial, the applicant submitted an appeal; however, the applicant later withdrew his appeal.

Analysis:

NAC 439.240 provides:

1. The State Board of Health will grant a variance from a regulation only if it finds from the evidence presented at the hearing that:
 - (a) There are circumstances or conditions which:
 - (1) Are unique to the applicant;
 - (2) Do not generally affect other persons subject to the regulation;
 - (3) Make compliance with the regulation unduly burdensome; and
 - (4) Cause a hardship to and abridge a substantial property right of the applicant; and
 - (b) Granting the variance:
 - (1) Is necessary to render substantial justice to the applicant and enable the applicant to preserve and enjoy his or her property right; and
 - (2) Will not be detrimental or pose a danger to public health and safety.
2. Whenever an applicant for a variance alleges that he or she suffers or will suffer economic hardship by complying with the regulation, the applicant must submit evidence demonstrating the costs of compliance with the regulation. The Board will consider the evidence and determine whether those costs are unreasonable.

The application alleges that the hardship of having to pay another fee for continuing with the licensing process is difficult, since the company is a non-profit organization.

Because the annual fee associated with licensure and license application applies to all applicants equally, DPBH staff does not find that an undue burden exists here. Furthermore, HCQC expended resources to process this application and upon expiration of the application, HCQC expended resources to generate notices to the applicant.

For the following reasons, Mr. Marlon’s application for variance should be denied:

- These circumstances are not unique to the applicant. All applicants with pending applications are required to pay another fee and update the application due to a one-year expiration and Vegas Stronger is only one of many non-profit applicants subject to these fee regulations.
- These regulations do generally affect other persons subjected to the regulations. HCQC identified that there are currently 24 other applicants that have applications that are expired. Seven have paid the invoice to “reactivate” their application. Thirteen other applicants have not responded to requests for

documentation and the others are being contacted for the necessary fee to continue with the application process.

- No financial information was provided by the applicant to show that compliance with the regulation is unduly burdensome.
- The applicant provided no information indicative of a hardship abridgement of a substantial property right of the applicant.
- Granting the variance is not necessary to render substantial justice to the applicant nor to enable the applicant to preserve and enjoy his or her property right. The initial application was not denied with prejudice, so the applicant may reapply for a health facility license, pay the appropriate fee and eventually become licensed.
- Granting the variance is detrimental (to the regulations) and thus poses a danger to public health and safety. The adverse effect of setting a precedent of waiving the licensure payment requirements would diminish the funding necessary to continue the licensure of health facilities. Fees are needed to continue the work of the Bureau in the licensing and inspections of health facilities for the safety of the residents of the State of Nevada.

Intent of the Regulation:

The intent of the regulations is to ensure:

There is sufficient funding to cover the cost of review of documents and inspections for compliance with health facility regulations prior to licensure of health facilities. This assures the safety of the residents in the state of Nevada that require care in a licensed health facility.

Degree of Risk to Public Health and Safety:

Not having appropriately licensed facilities in the state of Nevada or unregulated facilities due to the lack of funding for inspections and investigations could subject Nevada Residents to abuse and neglect from unscrupulous providers that have not gone through the regulatory process of licensure.

Staff Recommendation

Staff recommends that the Board of Health deny Case #751, Mr. David Marlon, Vegas Stronger variance request to not pay fees associated with licensure of a facility for treatment with narcotics.

Staff reasoning for the denial of Variance Case #751 includes:

This would set a precedent for future providers that to claim hardship simply due to the set fee amount, thus displacing the burden of the costs associated with HCQC's services back on to HCQC.

Public Comments:

Presenter: M. Jeanne Hesterlee, RN, Health Facility Inspection Manager, Bureau of Healthcare Quality and Compliance.

Attachments: None

NEVADA STATE BOARD OF HEALTH
DIVISION OF PUBLIC AND BEHAVIORAL HEALTH
4150 Technology Way, Suite 300
CARSON CITY, NV 89706

APPLICATION FOR VARIANCE

Please check the appropriate box that pertains to the NAC for which you are requesting a variance.

Division Administration
(NAC 439, 441A, 452, 453A, & 629)

Health Care Quality & Compliance
(NAC 449, 457, 459 & 652)

Child, Family & Community Wellness
(NAC 392, 394, 432A, 439, 441A, & 442)

Health Statistics, Planning,
Epidemiology and Response
(NAC 440, 450B, 452, 453, 453A, & 695C)

Public Health & Clinical Services
(NAC 211, 444, 446, 447, 583, & 585)

Date: July 18, 2023

Name of Applicant: Vegas Stronger

Phone: 702-234-1356

Mailing Address: 840 S. Rancho Drive #4323

City: Las Vegas State: Nevada Zip: 89106

We do hereby apply for a variance to _____ of the Nevada
chapter/section NAC 449.013(i)
Administrative Code (NAC). (For example: NAC 449.204)

Title of section in question: Facility for treatment with narcotics, medication unit.

Statement of existing or proposed conditions in violation of the NAC:

Division, Bureau of Health Care Quality and Compliance (BHCQC) sent letter requesting
missing documents. Vegas Stronger never received the letters in question. The employee
That was receiving the emails no longer works for Vegas Stronger.

NEVADA STATE BOARD OF HEALTH
DIVISION OF PUBLIC AND BEHAVIORAL HEALTH
4150 Technology Way, Suite 300
CARSON CITY, NV 89706

APPLICATION FOR VARIANCE

Date of initial operation (if existing): _____

ATTENTION: Please read this section closely. Your request for variance will be examined against these criteria:

Any person who, because of unique circumstances, is unduly burdened by a regulation of the State Board of Health and thereby suffers a hardship and the abridgement of a substantial property right may apply for a variance from a regulation. (NAC 439.200(1))

1. The State Board of Health will grant a variance from a regulation only if it finds from the evidence presented at the hearing that:
 - (a) There are circumstances or conditions which:
 - (1) Are unique to the applicant;
 - (2) Do not generally affect other persons subject to the regulation;
 - (3) Make compliance with the regulation unduly burdensome; and
 - (4) Cause a hardship to and abridge a substantial property right of the applicant; and
 - (b) Granting the variance:
 - (1) Is necessary to render substantial justice to the applicant and enable him to preserve and enjoy his property; and
 - (2) Will not be detrimental or pose a danger to public health and safety.

2. Whenever an applicant for a variance alleges that he suffers or will suffer economic hardship by complying with the regulation, he must submit evidence demonstrating the costs of his compliance with the regulation. The Board will consider the evidence and determine whether those costs are unreasonable. (NAC 439.240)

Therefore, it is important for your variance request to be as complete as possible. It is your responsibility to attach documentation supportive of your variance request.

Statement of degree of risk of health _____

Vegas Stronger is a non-profit organization for the treatment of drugs and alcohol in

Las Vegas Nevada. We simply cannot afford to pay this fee again.

NEVADA STATE BOARD OF HEALTH
DIVISION OF PUBLIC AND BEHAVIORAL HEALTH
4150 Technology Way, Suite 300
CARSON CITY, NV 89706

APPLICATION FOR VARIANCE

Please state in detail the circumstances or conditions which demonstrate that:

1. An exceptional and undue hardship results from a strict application of the Regulation:

We are a non-profit that cannot afford to pay another application Fee.

2. The variance, if granted, would not:

A. Cause substantial detriment to the public welfare.

The employee that first filled out the application (John Seeland) left Vegas Stronger and he was the only contact person on the application. We did not receive any notices from the DSBH until we received the denial letter.

We are requesting a fee variance because we a non-profit with limited funds.

B. Impair substantially the purpose of the regulation from which the application seeks a variance.

We were unaware that there were deadlines because we never recieved any notifications.

We would like to apply again for the facility and have the fee waived.

The bureau may require the following supporting documents to be submitted with and as a part of this application:

X 1. Legal description of property concerned

X 2. General area identification map

NEVADA STATE BOARD OF HEALTH
DIVISION OF PUBLIC AND BEHAVIORAL HEALTH
4150 Technology Way, Suite 300
CARSON CITY, NV 89706

APPLICATION FOR VARIANCE

- _ 3. Plat map showing locations of all pertinent items and appurtenances
- _ 4. Well log (if applicable)
- _ 5. Applicable lab reports
- _ 6. Applicable engineering or construction/remodeling information
- X7. Other items (see following pages)

This application must be accompanied by evidence demonstrating the costs of your compliance with regulations or specific statutory standards. Your request will be placed on the Board of Health agenda 40 days or more after receipt in this office if accompanied by the required fee (NAC 439.210). The application and supporting documentation will form the basis for the Division of Public and Behavioral Health staff report and recommendation(s) to the Board. Failure to respond to the above statements may cause the Board to deny consideration of the application at the requested Board meeting.

Please schedule this hearing during:



The next regularly scheduled Board of Health meeting, regardless of location.

We have a hearing on July 6th @ 8:00 AM



The next scheduled meeting in Carson City.



The next scheduled meeting in Las Vegas.

Signature: _____



Printed Name: David Marlon

Title: CEO

Date: June 30, 2023

NEVADA STATE BOARD OF HEALTH
DIVISION OF PUBLIC AND BEHAVIORAL HEALTH
4150 Technology Way, Suite 300
CARSON CITY, NV 89706

APPLICATION FOR VARIANCE

**PLEASE SUBMIT YOUR APPLICATION FOR VARIANCE BY USING
ANY OF THE FOLLOWING METHODS:**

MAIL TO:

Lisa Sherych, Administrator
Division of Public and Behavioral Health
4150 Technology Way, Suite 300
Carson City, NV 89706

FAX:

775-687-7570

EMAIL:

DPBH@health.nv.gov

SUBJECT IDENTIFICATION

Property Name or Type Main Street Industrial
Address 916 N. Main Street
Las Vegas, Nevada 89101
County Clark
MSA Las Vegas, NV-AZ
Census Tract 4.01
Tax Parcel Number 139-27-706-003

LEGAL DESCRIPTION

The subject property can be legally defined as follows per the most recent recorded deed from Clark County:

THAT PORTION OF THE NORTHWEST QUARTER (NW 1/4) OF THE SOUTHEAST QUARTER (SE 1/4) OF SECTION 27, TOWNSHIP 20 SOUTH, RANGE 61 EAST, M.D.B.&M., DESCRIBED AS FOLLOWS:

COMMENCING AT THE POINT OF INTERSECTION OF THE EASTERLY LINE OF NORTH MAIN STREET (86 FEET WIDE) WITH THE NORTH LINE OF THE SOUTHEAST QUARTER (SE 1/4) OF SAID SECTION 27; THENCE SOUTH 27°45' WEST ALONG THE SAID EAST LINE A DISTANCE OF 203.00 FEET TO THE TRUE POINT OF BEGINNING; THENCE CONTINUING SOUTH 27°45' WEST ALONG THE SAID EAST LINE, A DISTANCE OF 150.00 FEET TO A POINT; THENCE SOUTH 62°15' EAST 160.00 FEET TO A POINT; THENCE NORTH 27°45' EAST A DISTANCE OF 150.00 FEET TO A POINT; THENCE NORTH 62°15' WEST, A DISTANCE OF 160.00 FEET TO THE TRUE POINT OF BEGINNING.

NOTE: THE ABOVE METES AND BOUNDS DESCRIPTION APPEARED PREVIOUSLY IN THAT CERTAIN DOCUMENT RECORDED NOVEMBER 27, 2000 IN BOOK 20001127, AS INSTRUMENT NO. 01534.

PARCEL MAP

ASSESSOR'S PARCELS - CLARK COUNTY, NV. Briana Johnson - Assessor

T20S R61E

125	124	123
138	139	140
163	162	161

Scale: 1" = 200'

MAP LEGEND	CONDOMINIUM UNIT	001 ROAD PARCEL NUMBER
Parcel Boundary	Air Space PCL	001 PARCEL NUMBER
Sub Boundary	Right of Way PCL	1.00 ACREAGE
Plat Boundary	Sub-Surface PCL	202 PARCEL SUB/SEC O NUMBER
Road Easement	Historic Lot Line	PM 24-45 PLAT RECORDING NUMBER
Watch/Leader Line	Historic Sub Boundary	5 BLOCK NUMBER
Historic Lot Line	Historic Plat Boundary	5 LOT NUMBER
Section Line		6.5 GOV LOT NUMBER

NOTES

This map is for assessment use only and does NOT represent a survey. No liability is assumed for the accuracy of the data delineated herein. Information on roads and other non-assessed parcels may be obtained from the Road Document Listing in the Assessor's Office.

This map is compiled from official records, including surveys and deeds, but only contains the information required for assessment. See the recorded documents for more detailed legal information.

USE THIS SCALE FIELD WHEN MAP REDUCED FROM LIXIT ORIGINAL





**DEPARTMENT OF HEALTH AND HUMAN SERVICES
NEVADA DIVISION OF PUBLIC AND BEHAVIORAL HEALTH (DPBH)**

Payment Receipt

Payment Details			
Payment Mode	Online Credit Card	Receipt #	263063
Amount	\$ 5046.00	Online Transaction #	254331
Receipt Date	12/20/2021	Invoice #	INV-101369

Payment Distribution Details				
Business Unit	Name (Credential #)	Distribution Amount	Distribution Code	Comments
Health Facilities	VEGAS STRONGER (10711)	\$ 5046.00	Applications - Health Facilities	

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DIVISION OF PUBLIC AND BEHAVIORAL HEALTH
4150 Technology Way, Suite 300
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APPLICATION FOR VARIANCE

**PLEASE SUBMIT YOUR APPLICATION FOR VARIANCE BY USING
ANY OF THE FOLLOWING METHODS:**

MAIL TO:

Lisa Sherych, Administrator
Division of Public and Behavioral Health
4150 Technology Way, Suite 300
Carson City, NV 89706

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DPBH@health.nv.gov