

# 60-DAY NOTICE OF VIOLATION

SENT IN COMPLIANCE WITH CALIFORNIA HEALTH & SAFETY CODE § 25249.7(d)

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**DATE:** June 4, 2014

**TO:** Sue Chen, President – Nova Ortho-Med Inc.  
California Attorney General’s Office;  
District Attorney’s Office for 58 Counties; and  
City Attorneys for San Francisco, San Diego, San Jose, Sacramento and Los Angeles

**FROM:** Anthony E. Held, Ph.D., P.E.

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## I. INTRODUCTION

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My name is Anthony E. Held. I hold a Doctor of Philosophy degree in Environmental Engineering and I am a registered professional engineer in the State of California. I am a citizen of the State of California acting in the interest of the general public. I seek to promote awareness of exposures to toxic chemicals in products sold in California and, if possible, to improve human health by reducing hazardous substances contained in such items. This Notice is provided to the public agencies listed above pursuant to California Health & Safety Code § 25249.6 *et seq.* (“Proposition 65”). As noted above, notice is also being provided to the alleged violator, Nova Ortho-Med Inc. (the “Violator”). The violations covered by this Notice consist of the product exposures, routes of exposure, and type of harm potentially resulting from exposure to the toxic chemical (“listed chemical”) identified below, as follows:

Product Exposure: See Section VII. Exhibit A  
Listed Chemical: Di(2-ethylhexyl)phthalate (“DEHP”)  
Routes of Exposure: Ingestion, Dermal  
Types of Harm: Birth Defects and Other Reproductive Harm

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## II. NATURE OF ALLEGED VIOLATION (PRODUCT EXPOSURE)

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The specific type of product that is causing consumer and occupational exposures in violation of Proposition 65, and that is covered by this Notice, is listed under “Product Category/Type” in Exhibit A in Section VII below. All products within the category covered by this Notice shall be referred to hereinafter as the “products.” Exposures to the listed chemical from the use of the products have been occurring without the clear and reasonable warning required by Proposition 65, dating as far back as June 4, 2011. Without proper warnings regarding the toxic effects of exposures to the listed chemical resulting from contact with the products, California citizens lack the information necessary to make informed decisions on whether and how to eliminate (or reduce) the risk of exposure to the listed chemical from the reasonably foreseeable use of the products.

California citizens, through the act of buying, acquiring or utilizing the products, are exposed to the listed chemical. Women of childbearing age ingest the listed chemical when they, among other activities, touch the products and transfer the listed chemical from the products to their mouths through hand-to-mouth activities that may continue to occur for a significant period after contact with the products stops. Women of childbearing age are exposed to the listed chemical through direct dermal contact when they, among other activities, handle, touch or otherwise use the products.

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### **III. CONTACT INFORMATION**

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Please direct all questions concerning this notice to me through my counsel's office at the following address:

Anthony E. Held, Ph.D., P.E.  
c/o Josh Voorhees  
The Chanler Group  
Parker Plaza  
2560 Ninth Street, Suite 214  
Berkeley, CA 94710  
Telephone: (510) 848-8880

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### **IV. PROPOSITION 65 INFORMATION**

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For general information concerning the provisions of Proposition 65, please feel free to contact the Office of Environmental Health Hazard Assessment's ("OEHHA") Proposition 65 Implementation Office at (916) 445-6900. For the Violator's reference, I have attached a copy of "Proposition 65: A Summary" which has been prepared by OEHHA.

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### **V. RESOLUTION OF NOTICED CLAIMS**

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Based on the allegations set forth in this Notice, I intend to file a citizen enforcement lawsuit against the alleged Violator unless such Violator enters into a binding written agreement to: (1) recall products already sold or undertake best efforts to ensure that the requisite health hazard warnings are provided to those who have received such products; (2) provide clear and reasonable warnings for products sold in the future or reformulate such products to eliminate the DEHP exposures; and (3) pay an appropriate civil penalty based on the factors enumerated in California Health & Safety Code § 25249.7(b). If the alleged Violator is interested in resolving this dispute without resorting to time-consuming and expensive litigation, please feel free to contact my counsel identified in Section III above. It should be noted that neither my counsel nor I can: (1) finalize any settlement until after the 60-day notice period has expired; nor (2) speak for the Attorney General or any district or city attorney who received this Notice. Therefore, while reaching an agreement with me will resolve my claims, such agreement may not satisfy the public prosecutors.

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**VI. ADDITIONAL NOTICE INFORMATION**

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Identified below is a specific example of a product recently purchased and witnessed as being available for purchase or use in California that is within the category or type of offending product covered by this Notice. Based on publicly available information, the retailers, distributors and/or manufacturers of the example within the category or type of product are also provided below. I believe and allege that the sale of the offending products also has occurred without the requisite Proposition 65 “clear and reasonable warning” at one or more locations and/or via other means including, but not limited to, transactions made over-the-counter, business-to-business, through the internet and/or via a catalog by the Violator and other retailers and distributors of the manufacturer.

<i>Product*</i>	<i>Retailer(s)</i>	<i>Manufacturer(s)/Distributor(s)</i>
Nova The Vogue Rolling Walker, Item # 4205BL-R, UPC #6 52308 13103 2	Walgreen Co. Sacramento County, Northern California	Nova Ortho-Med Inc.

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**VII. EXHIBIT A**

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<i>Product Category/Type</i>	<i>Such As*</i>	<i>Toxins</i>
Walkers with Vinyl/PVC Seat Upholstery	Nova The Vogue Rolling Walker, Item # 4205BL-R, UPC #6 52308 13103 2	Di(2-ethylhexyl)phthalate

\*The specifically identified example of the type of product that is subject to this Notice is for the recipient’s benefit to assist in its investigation of, among other things, the magnitude of potential exposures to the listed chemical from other items within the product category/type listed in Exhibit A. It is important to note that this example is not meant to be an exhaustive or comprehensive identification of each specific offending product of the type listed under “Product Category/Type” in Exhibit A. Further, it is this citizen’s position that the alleged Violator is obligated to continue to conduct in good faith an investigation into other specific products within the type or category described above that may have been manufactured, distributed, sold, shipped, stored (or otherwise within the notice recipient’s custody or control) during the relevant period so as to ensure that the requisite toxic warnings were and are provided to California citizens prior to purchase.

# PROOF OF SERVICE

I, the undersigned, declare under penalty of perjury:

I am over the age of 18 years, and not a party to the within action; my business address is Parker Plaza, 2560 Ninth Street, Suite 214, Berkeley, CA. 94710.

On June 4, 2014, I served the following documents:

**60-DAY NOTICE OF VIOLATION SENT IN COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7(d);**

**PROPOSITION 65: A SUMMARY;**

**CERTIFICATE OF MERIT; AND**

**CERTIFICATE OF MERIT ATTACHMENTS (SERVED ONLY ON THE ATTORNEY GENERAL)**

on the entity listed below via First Class Certified Mail through the United States Postal Service by placing a true and correct copy in a sealed envelope, addressed to the entity listed below and providing such envelope to a United States Postal Service Representative:


Sue Chen, President  
Nova Ortho-Med Inc.  
1470 Beachey Place  
Carson, CA 90746

as well as by providing copies of the above documents electronically uploaded to the public enforcers according to directions from their respective offices, and/or by placing a true and correct copy in a sealed envelope, addressed to each party listed below, and served as follows:

<i>Electronically Uploaded to the Attorney General's website:</i>	The Attorney General of the State of California;
<i>By placing each envelope in a United States Postal Service mailbox, postage prepaid:</i>	The District Attorney for Each of the 58 counties in California; and  The City Attorney for Los Angeles, San Diego, San Jose, San Francisco and Sacramento

*A list of addresses for each of these recipients is attached.*

Executed on June 4, 2014, at Berkeley, California.

  
\_\_\_\_\_  
Caroline Pak


# CERTIFICATE OF MERIT

Health and Safety Code Section 25249.7(d)

I, Clifford A. Chanler, hereby declare:

1. This Certificate of Merit accompanies the attached sixty-day notice in which it is alleged that the party identified in the notice has violated Health and Safety Code § 25249.6 by failing to provide clear and reasonable warnings;
2. I am the attorney for the noticing party;
3. I have consulted with one or more persons with relevant and appropriate experience or expertise who has reviewed facts, studies, or other data regarding the *alleged* exposure to the listed chemical that is the subject of this action;
4. Based on the information obtained through those consultations, and on all other information in my possession, I believe there is a reasonable and meritorious case for the private action. I understand that “reasonable and meritorious case for the private action” means that the information provides a credible basis that all elements of the plaintiff’s case can be established and the information did not prove that the alleged Violator will be able to establish any of the affirmative defenses set forth in the statute;
5. The copy of this Certificate of Merit served on the Attorney General attaches to it factual information sufficient to establish the basis for this certificate, including information identified in Health and Safety Code § 25249.7(h)(2) (*i.e.*, (1) the identity of the persons consulted with and relied on by the certifier, and (2) the facts, studies, or other data reviewed by those persons).

Dated: June 4, 2014



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Clifford A. Chanler

# SERVICE LIST

The Honorable Nancy O'Malley  
Alameda County District Attorney  
1225 Fallon Street, Room 900  
Oakland, CA 94612

The Honorable Terese Drabec  
Alpine County District Attorney  
270 Laramie Street, PO BOX 248  
Markleeville, CA 96120

The Honorable Todd Riebe  
Amador County District Attorney  
708 Court Street  
Jackson, CA 95642

The Honorable Michael Ramsey  
Butte County District Attorney  
25 County Center Drive  
Oroville, CA 95965

The Honorable Barbara Yook  
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891 Mountain Ranch Road  
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The Honorable John R. Poyner  
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Colusa, CA 95932

The Honorable Mark Peterson  
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The Honorable Jon Alexander  
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The Honorable Vernon Pierson  
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The Honorable Elizabeth Egan  
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The Honorable Robert Maloney  
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The Honorable Paul Gallegos  
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825 5<sup>th</sup> Street  
Eureka, CA 95501

The Honorable Gilbert Otero  
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940 West Main Street, Suite 102  
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The Honorable Arthur Maillet  
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The Honorable Lisa Green  
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The Honorable Greg Strickland  
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1400 West Lacey Boulevard  
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The Honorable Donald Anderson  
Lake County District Attorney  
255 North Forbes Street  
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The Honorable Steve Cooley  
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Madera, CA 93637

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The Honorable Robert Brown  
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5101 Jones Street, P.O. Box 730  
Mariposa, CA 95338

The Honorable C. David Eyster  
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P.O. Box 1000  
Ukiah, CA 95482

The Honorable Larry Morse II  
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The Honorable Gary Woolverton  
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Alturas, CA 96101

The Honorable George Booth  
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P.O. Box 617  
Bridgeport, CA 93517

The Honorable Dean Flippo  
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P.O. Box 1131  
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The Honorable Gary Lieberstein  
Napa County District Attorney  
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Napa, CA 94559

The Honorable Clifford Newell  
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Nevada City, CA 95959

The Honorable Tony Rackauckas  
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401 Civic Center Drive West  
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The Honorable Ronald Owens  
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The Honorable David Hollister  
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The Honorable Paul Zellerbach  
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Riverside, CA 92501

The Honorable Jan Scully  
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Sacramento, CA 95814

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Hollister, CA 95203

The Honorable Michael Ramos  
San Bernardino County District Attorney  
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San Bernardino, CA 92415

The Honorable Bonnie Dumanis  
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San Diego, CA 92101

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850 Bryant Street, Room 322  
San Francisco, CA 94103

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P.O. Box 990  
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San Luis Obispo, CA 93408

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The Honorable Richard Doyle  
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Office of the California Attorney General  
Proposition 65 Enforcement Reporting  
ATTN: Prop 65 Coordinator  
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Oakland, CA 94612-0550