

**ADOPTED REGULATION OF THE STATE BOARD OF
PHYSICAL THERAPY EXAMINERS**

LCB File No. R107-10

Effective October 15, 2010

EXPLANATION – Matter in *italics* is new; matter in brackets ~~[omitted material]~~ is material to be omitted.

AUTHORITY: §§1-11, NRS 640.050; §12, NRS 640.050 and 640.160.

A REGULATION relating to physical therapy; revising provisions governing the practice of physical therapists and physical therapist's assistants licensed by the State Board of Physical Therapy Examiners; providing additional grounds for the taking of disciplinary action against such licensees; and providing other matters properly relating thereto.

Section 1. Chapter 640 of NAC is hereby amended by adding thereto the provisions set forth as sections 2, 3 and 4 of this regulation.

Sec. 2. 1. *A physical therapist shall not supervise a graduate of physical therapy pursuant to NRS 640.120 without the approval of the Board.*

2. A physical therapist who wishes to apply for such approval must submit to the Board, on a form provided by the Board, a separate request for approval for each location at which the graduate of physical therapy will provide physical therapy services.

3. Any approval granted by the Board applies only to the supervision of the graduate of physical therapy at the specified location by the physical therapist to whom the approval is granted and does not authorize the supervision of the graduate of physical therapy at any other location or by any other physical therapist.

Sec. 3. *A physical therapist retains personal responsibility for each patient listed on the treatment schedule of the physical therapist for the duration of the period covered by that*

schedule, notwithstanding the employment of any other physical therapist at the same location.

Sec. 4. *In any disciplinary action brought against a licensee, the Board will consider in mitigation of an alleged violation the cooperation of and voluntary disclosure of information by the licensee in the investigation of the alleged violation.*

Sec. 5. NAC 640.010 is hereby amended to read as follows:

640.010 1. The Executive ~~{Secretary}~~ *Director* of the Board shall announce, pursuant to NRS 241.020, the time and place of each scheduled meeting of the Board.

2. The Board will provide a copy of its list of licensees to the Commissioner of Insurance without charge. The list of licensees will be produced annually.

3. A copy of the list of licensees may be obtained from the Board upon written application accompanied by the appropriate fee.

Sec. 6. NAC 640.040 is hereby amended to read as follows:

640.040 1. The Board will use the examination prepared by a professional examination service retained by the Board in the examination of an applicant for a license as a physical therapist or a physical therapist's assistant.

2. In addition to the examination used pursuant to subsection 1, the Board may administer an examination that tests the familiarity of an applicant with the laws and regulations relevant to the practice of physical therapy in this State.

3. To be eligible to take the examinations, an applicant must file a completed application with the Executive ~~{Secretary}~~ *Director* of the Board.

4. The applicant must achieve a passing score on each examination before he will be licensed.

5. If the applicant fails an examination once, he may retake it upon payment of the fee for the examination.

Sec. 7. NAC 640.061 is hereby amended to read as follows:

640.061 1. Each licensee shall file, in writing, his current residential address and professional address with the Board.

2. A licensee shall notify the Board, in writing, of any change in his residential address or primary professional address within 30 days after the change. *For the purpose of this subsection, the Board will consider a change in the primary professional address of a licensee to have occurred upon any change in the primary location at which the licensee works, including, without limitation, the cessation of the licensee's primary employment and the securing of new primary employment.*

3. If the Board is required by law or the provisions of this chapter to deliver any notice by mail to a licensee, the mailing of the notice shall be deemed valid and complete if it is mailed to the last residential address of the licensee which was filed with the Board in accordance with this section.

4. As used in this section, "primary professional address" means the physical address where a licensee practices physical therapy or carries out any other activities relating to physical therapy for the majority of his working hours within a consecutive 30-day period.

Sec. 8. NAC 640.170 is hereby amended to read as follows:

640.170 1. Upon receipt of a complaint filed against a licensee pursuant to NRS 640.161, the ~~[Board's Secretary]~~ *Executive Director of the Board* shall designate an investigator employed by the Board to conduct an investigation of the complaint. Upon completing the investigation, the investigator shall submit ~~[to the Board's Secretary]~~ a written report of his

investigation ~~[]~~ *to the Executive Director*, including any records, documents or other information discovered during the investigation.

2. The ~~[Board's Secretary]~~ *Executive Director* shall designate a member of the Board to review the report. The member of the Board may conduct a further investigation of the complaint if he considers such investigation necessary. Upon completing a review of the report, the member shall submit a written recommendation to the Board concerning the disposition of the complaint. The member may not vote at any hearing concerning the complaint.

3. If the Board, after reviewing a complaint, decides to proceed with a hearing, it will send a copy of the complaint to each person against whom the complaint is made. A response to the complaint must be filed within 20 days after receipt of the complaint.

Sec. 9. NAC 640.510 is hereby amended to read as follows:

640.510 1. ~~[A]~~ *Except as otherwise provided in subsection 2, a* physical therapist or physical therapist's assistant who wishes to renew his license and who is required to complete continuing education pursuant to NAC 640.400 must submit to the Board, on an original form, a signed, written statement in substantially the following language for each year since his last renewal:

I,, hereby certify to the State Board of Physical Therapy Examiners that I have obtained units of an approved course for continuing education during the period August 1,, through and including July 31,

Dated this day of,

.....

Signature of Physical Therapist or
Physical Therapist's Assistant

2. *In lieu of submitting a written certification to the Board pursuant to subsection 1, a licensee who chooses to renew his or her license using the Internet website of the Board may provide a substantially similar certification to the Board on that website.*

3. A licensed physical therapist or physical therapist's assistant shall retain a certificate of completion issued to him pursuant to NAC 640.420 or other documentation, approved by the Board, of his completion of a course of study or training for continuing education for 4 years after completion of the course or training. A copy of the certificate or other documentation must be submitted to the Board upon request to verify his completion of the course of study or training.

~~{3.}~~ 4. The Board will conduct random audits of physical therapists and physical therapist's assistants who have renewed their licenses to ensure compliance with the requirements of this section and NAC 640.400.

Sec. 10. NAC 640.650 is hereby amended to read as follows:

640.650 ~~{1.}~~ A physical therapist's assistant shall ~~[submit verification of his employment and supervision by a licensed physical therapist to the Board within 30 days after a change in his employment or supervision. The verification must be submitted on a form approved by the Board.~~

~~—2.—~~ A physical therapist who is licensed by the Board shall notify the Board within 30 days after the termination of his] *include in the notation of each treatment with which he or she is*

involved the name of the physical therapist who is responsible for the supervision of ~~[a]~~ *the* physical therapist's assistant.

Sec. 11. NAC 640.670 is hereby amended to read as follows:

640.670 For the purposes of NRS 640.160:

1. "Gross negligence" means conduct which constitutes an extreme departure from the standard of care required of a licensee under the circumstances and which proximately causes damage to a patient.

2. "Malpractice" means conduct which falls below the standard of care required of a licensee under the circumstances and which proximately causes damage to a patient.

3. A licensee is "professionally incompetent" if he:

(a) Lacks the knowledge, skill or ability to discharge a professional obligation, or discharges a professional obligation while impaired; *or*

(b) Consistently uses a procedure or treatment which constitutes a departure from the prevailing standard of the acceptable practice of physical therapy. ~~;~~ ~~or~~

~~—(c) Uses any controlled substance, dangerous drug or intoxicating liquid to an extent or in a manner which is dangerous or injurious to another person or which impairs his ability to conduct the practice authorized by his license. As used in this paragraph, "dangerous drug" has the meaning ascribed to it in NRS 454.201.]~~

4. "Unearned fee" means any contract or arrangement entered into by a licensee to provide a person with a credit, gratuity, commission, professional discount or wage in consideration for the referral of a patient by that person to the physical therapist.

Sec. 12. NAC 640.685 is hereby amended to read as follows:

640.685 **1.** In addition to the grounds set forth in subsection 2 of NRS 640.160, the Board may take disciplinary action against a licensee if it determines that the licensee ~~failed~~:

(a) **Failed** to retain, furnish a copy of or make available the health care records of a patient as required pursuant to NRS 629.051, 629.061 and 629.065 ~~§~~;

(b) **Failed voluntarily to report to the Board his or her addiction to the use of a controlled substance;**

(c) **Failed voluntarily to report to the Board within 30 days any judgment or settlement in an amount of \$5,000 or more entered against or agreed to by the licensee on a claim involving malpractice; or**

(d) **Is an impaired practitioner.**

2. As used in this section:

(a) **“Dangerous drug” has the meaning ascribed to it in NRS 454.201.**

(b) **“Impaired practitioner” means a licensee who uses any controlled substance, dangerous drug or intoxicating liquid to an extent or in a manner which is dangerous or injurious to another person or which impairs the ability of the licensee to conduct the practice authorized by his or her license.**

**LEGISLATIVE REVIEW OF ADOPTED REGULATIONS AS REQUIRED BY
ADMINISTRATIVE PROCEDURES ACT, NRS 233B.066
LCB FILE R107-10**

The following statement is submitted for adopted amendments to Nevada Administrative Code (NAC) 640.

1. A description of how public comment was solicited, a summary of public response, and an explanation how other interested persons may obtain a copy of the summary.

On **March 23, 2010** a workshop was conducted at the Office of the Board and simultaneously via phone-conferencing in Reno, Nevada. Notices were also sent to all persons/businesses that are on the Board's mailing list for agendas. The workshop was also noticed on the Board's website.

On **April 13, 2010** a workshop was conducted at the Office of the Board in Las Vegas CHAPTER 454 - POISONS; DANGEROUS DRUGS AND HYPODERMICS CHAPTER 454 - POISONS; DANGEROUS DRUGS AND HYPODERMICS simultaneously via phone-conferencing in Reno, Nevada. This workshop was noticed to all persons/businesses that are on the Board's mailing list for agendas. The workshop was also noticed on the Board's website.

On **July 20, 2010** a Notice of Intent to Act Upon a Regulation was conducted at the Office of the Board in Las Vegas. This was noticed to all persons/businesses that are on the Board's mailing list for agendas. The notice was also posted on the Board's website. Additionally, the notice was mailed to all libraries, the Capitol Building, Legislative Building, State Library and Archives.

Public response was primarily focused on several recommended changes which had no support from either the public in attendance or the Board. Any interested party may contact the Board in writing, via email or in person to request any information and documents from the hearings.

2. The number of persons who:

(a) Attended each hearing:

3/23/10 - 13

4/13/10 - 3

7/20/10 - 2

(b) Testified at each hearing:

3/23/10 - 5

4/13/10 - 3

7/20/10 - 2

(c) Submitted to the agency written comments: Comments were submitted by 5 persons (all licensees) regarding the suggestion to change the language regarding the use of technicians. The concern was the change would no longer allow clinical affiliations in Nevada. The Board agreed that the change should not be made and the suggestion to amend the language was denied.

3. **A description of how comment was solicited from affected business, a summary of their responses, and an explanation how other interested persons may obtain a copy of the summary.**

There are no businesses affected by the proposed changes.

4. **If the regulation was adopted without changing any part of the proposed regulation, a summary of the reasons for adopting the regulation without change.**

The regulation was adopted **with** changes to the proposed regulation. This was based on public comment and Board comment.

The change was to **remove the recommendation to add NAC 640.596(1)(e)** regarding the duties of physical therapist's assistants. The public and the Board discussed that assistants would be prohibited from assessing the needs of their patients if the suggested change was made. Such a limitation is not in the best interest of the patients.

5. **The estimated economic effect of the adopted regulation on the business that it is to regulate and on the public. These must be stated separately, and each case must include:**
 - (a) **Both adverse and beneficial effects; and**
 - (b) **Both immediate and long-term effects.**

- a. The Board does not regulate business, we license individuals only. The proposed revisions are expected to have no immediate or long-term effect on the licensees.
- b. There is no estimate economic effect on the public, either adverse or beneficial, nor immediate or long-term.

6. **The estimated cost to the agency for enforcement of the adopted regulations.**

There is no additional cost to the agency for the enforcement of these regulations.

7. **A description of any regulations of other state or government agencies that the proposed regulation overlaps or supplants, and a statement explaining why the duplication or overlapping is necessary. If the regulation overlaps or duplicates a federal regulation, the name of the regulating federal agency.**

There are no other state or government agency regulations that the proposed amendments duplicate.

8. **If the regulation includes provisions that are more stringent than a federal regulation that regulates the same activity, a summary of such provisions.**

There are no federal regulations regarding any of these proposed regulations.

- 9. If the regulation provides a new fee of increase an exiting fee, the annual amount the agency expects to collect and the manner in which the money will be used.**

There are no proposed fee increases or changes.