PROPOSED REGULATION OF THE

STATE BOARD OF PHARMACY

LCB File No. R047-18

April 16, 2018

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

AUTHORITY: §§1-6, NRS 639.070 and section 58 of Assembly Bill No. 474, chapter 605, Statutes of Nevada 2017, at page 4434 (NRS 639.23916).

A REGULATION relating to controlled substances; defining certain terms for the purposes of provisions relating to the prescription of controlled substances; requiring a review of the medical history of a patient and physical examination of a patient conducted for certain purposes to be targeted to the condition causing the pain of the patient; specifying the conditions under which a practitioner will be determined to have made a good faith effort to obtain the medical records of the patient for certain purposes; specifying certain conditions under which a practitioner will be deemed to have obtained the informed written consent of a patient; clarifying that a practitioner may prescribe a controlled substance under certain conditions; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law imposes certain requirements concerning the "initial prescription" of a controlled substance listed in schedule II, III or IV or an opioid that is a controlled substance listed in schedule V, including limits on the prescription of a controlled substance listed in schedule II, III or IV issued for the treatment of "acute pain." (NRS 639.23507; sections 52-54 and 56 of Assembly Bill No. 474, chapter 605, Statutes of Nevada 2017, at pages 4430, 4431 and 4433 (NRS 639.2391-639.23912, 639.23914)) For these purposes, "initial prescription" is defined to mean a prescription originated for a new patient or a new prescription to begin a new "course of treatment" for an existing patient of a practitioner, other than a veterinarian. (Section 51 of Assembly Bill No. 474, chapter 605, Statutes of Nevada 2017, at page 4430 (NRS 639.0082)) **Sections 2 and 3** of this regulation, respectively, define the terms "acute pain" and "course of treatment" for the purposes of these provisions.

Before issuing an initial prescription for a controlled substance listed in schedule II, III or IV for the treatment of pain, existing law requires a practitioner, other than a veterinarian, to: (1) obtain and review the medical history of the patient; (2) conduct a physical examination of the patient; (3) make a good faith effort to obtain and review the medical records of the patient from any other provider of health care who has provided care to the patient; and (4) obtain the informed written consent of the patient to the use of the controlled substance. (Sections 53 and

54 of Assembly Bill No. 474, chapter 605, Statutes of Nevada 2017, at page 4431 (NRS 639.23911, 639.23912)) **Section 5** of this regulation requires such a review or examination to be targeted to the condition causing the pain of the patient. **Section 5** also specifies the conditions under which a practitioner will be deemed to have made a good faith effort to obtain the medical records of the patient. **Section 4** of this regulation provides that a practitioner has obtained the informed written consent of a patient to the use of a controlled substance if the practitioner has: (1) viewed informed written consent previously given by the patient and stored on a database maintained by the practitioner or a group of practitioners with which the practitioner is associated; and (2) discussed the provisions of the informed written consent with the patient, allowed the patient to ask questions about those provisions and answered those questions.

Before issuing an initial prescription for a controlled substance listed in schedule II, III or IV or an opioid that is a controlled substance listed in schedule V and at least once every 90 days thereafter for the duration of the course of treatment using the controlled substance, a practitioner, other than a veterinarian, is required to obtain a patient utilization report regarding the patient from the computerized prescription monitoring program established by the State Board of Pharmacy and the Investigation Division of the Department of Public Safety. The practitioner is required to determine whether the patient has been issued another prescription for the same controlled substance that provides for ongoing treatment using the controlled substance. If the practitioner determines that the patient has been issued such a prescription, the practitioner is prohibited from prescribing the controlled substance. (NRS 639.23507) **Section 6** of this regulation clarifies that a practitioner is not prohibited from: (1) prescribing a controlled substance that is different from a controlled substance for which the patient has an existing prescription; (2) increasing the dosage of a controlled substance that has been prescribed to a patient; or (3) prescribing a controlled substance to continue an ongoing course of treatment or replace doses of a controlled substance that have been lost, stolen or destroyed.

Section 1. Chapter 639 of NAC is hereby amended by adding thereto the provisions set forth as sections 2 to 6, inclusive, of this regulation.

Sec. 2. ***As used in section 52 of Assembly Bill No. 474, chapter 605, Statutes of Nevada 2017, at page 4430 (NRS 639.2391), "acute pain" means pain that has an abrupt onset and is caused by injury or another cause that is not ongoing. The term does not include chronic pain or pain that is being treated as part of care for cancer, palliative care, hospice care or other end-of-life care.***

Sec. 3. ***As used in NRS 639.23507, sections 51 to 58, inclusive, of Assembly Bill No. 474, chapter 605, Statutes of Nevada 2017, at pages 4430-34 (NRS 639.0082, 639.2391 to 639.23916, inclusive), and sections 2 to 6, inclusive, of this regulation, "course of treatment"***

means all treatment of a patient for a particular disease or symptom of a disease, including, without limitation, a new treatment initiated by any practitioner for a disease or symptom for which the patient was previously receiving treatment.

Sec. 4. *As used in section 53 of Assembly Bill No. 474, chapter 605, Statutes of Nevada 2017, at page 4431 (NRS 639.23911), to "obtain informed written consent to the use of the controlled substance" includes, without limitation:*

1. Viewing informed written consent that meets the requirements of subsection 2 of section 54 of Assembly Bill No. 474, chapter 605, Statutes of Nevada 2017, at page 4431 (NRS 639.23912), previously given by the patient and stored on a database maintained by the practitioner or a group of practitioners with which the practitioner is associated; and

2. Immediately before prescribing the controlled substance, discussing the provisions of the informed written consent described in subsection 1 with the patient, allowing the patient to ask questions about those provisions and answering those questions.

Sec. 5. *1. A practitioner conducting a review of the medical history and physical examination of a patient pursuant to section 54 of Assembly Bill No. 474, chapter 605, Statutes of Nevada 2017, at page 4431 (NRS 639.23912), shall target the review and examination to the condition causing the pain of the patient.*

2. A practitioner makes a good faith effort to obtain and review the medical records of a patient, as required by section 54 of Assembly Bill No. 474, chapter 605, Statutes of Nevada 2017, at page 4431 (NRS 639.23912), if the practitioner makes an effort to obtain all medical records that, in the professional judgment of the practitioner, are necessary to determine whether to prescribe a controlled substance listed in schedule II, III or IV to the patient. In

determining whether a medical record is necessary to make such a determination, a practitioner may consider:

(a) The time needed to provide care to the patient;

(b) The nature of the practice of the practitioner; and

(c) Whether the benefit of prescribing the controlled substance without obtaining the medical record outweighs the risk of doing so.

Sec. 6. *The Board does not construe NRS 639.23507 to prohibit a practitioner from:*

1. Prescribing a controlled substance listed in schedule II, III or IV or an opioid that is a controlled substance listed in schedule V to a patient who has been issued another prescription for a different controlled substance listed in schedule II, III or IV or opioid that is a controlled substance listed in schedule V;

2. Increasing the dosage of a controlled substance listed in schedule II, III or IV or an opioid that is a controlled substance listed in schedule V that has been prescribed to a patient; or

3. Prescribing a controlled substance listed in schedule II, III or IV or an opioid that is a controlled substance listed in schedule V for the purpose of:

(a) Continuing the same course of treatment for which the patient has previously been prescribed the same controlled substance; or

(b) Replacing doses of the controlled substance that have been lost, stolen or destroyed.