PROPOSED REGULATION OF THE

STATE BOARD OF PHARMACY

LCB FILE NO. R083-20I

The following document is the initial draft regulation proposed

by the agency submitted on 06/16/2020

PROPOSED REGULATION OF THE

NEVADA STATE BOARD OF PHARMACY

Workshop

June 3, 2020

Explanation – Language in ***blue italics*** is new; language in ***red text*** [~~*omitted material*~~] is language to be omitted, and language in ***green text*** indicates prior Board-approved amendments that are in the process of being codified.

AUTHORITY: NRS 639.070; NRS 639.2353; NRS 639.23535

A REGULATION relating to the manner in which a prescription must be given.

Chapters 453, and 639 of NAC is hereby amended by adding or omitting thereto the following provisions:

NAC 453.430 Restrictions on issuance of prescriptions; continuation of dependency on narcotic drug~~*; transmission of prescription by facsimile machine*~~. (NRS 453.221**,** 453.385**,** 639.070**)**

1. An individual practitioner may not issue a prescription in order to obtain controlled substances for the purpose of general dispensing to patients.

2. A prescription may not be issued for dispensing any narcotic drug to a person dependent on a narcotic drug for the purpose of continuing the person's dependence upon the drug except in the course of an authorized clinical investigation in the development of a program for rehabilitating narcotic addicts.

3. The administering or dispensing directly, but not the prescribing, of any narcotic drugs to a person dependent on a narcotic drug for the purpose of continuing the person's dependence upon the drug is permissible in the course of conducting a federally authorized clinical investigation in the development of a program for rehabilitating narcotic addicts if the activity is within the course of professional practice or research.

~~*4. A prescription for a controlled substance listed in schedule III, IV or V may be transmitted by a practitioner or his or her agent by a facsimile machine to a pharmacy pursuant to the provisions of NAC 639.711.*~~

[Bd. of Pharmacy, § 453.240, eff. 6-26-80] — (NAC A by R164-01, 12-17-2001; ***XX-XX-2020***)

…

NAC 639.010 Definitions. (NRS 639.070**)** As used in this chapter, unless the context otherwise requires:

1. "Board" means the State Board of Pharmacy.
2. "Controlled substances" has the meaning ascribed to it in NRS 0.031.
3. "Dangerous drug" has the meaning ascribed to it in NRS 454.201.

4. "Direct supervision" means the direction given by a supervising pharmacist who is:

(a) On the premises of the pharmacy or telepharmacy at all times when the person he or she is supervising is working at the pharmacy or telepharmacy or at a remote site or satellite consultation site; and

(b) Aware of the activities of that person related to the preparation and dispensing of medications, including the maintenance of appropriate records.

5. "Executive Secretary" means the Executive Secretary employed by the Board pursuant to NRS 639.040.

6. "Pharmaceutical technician" means a person who performs technical services in a pharmacy under the direct supervision of a pharmacist and is registered with the Board pursuant to NAC 639.240.

7. "Pharmaceutical technician in training" means a person who is registered with the Board pursuant to NAC 639.242 in order to obtain the training and experience required to be a pharmaceutical technician pursuant to subparagraph (3) of paragraph (e) of subsection 2 of NAC 639.240, or who is enrolled in a program of training for pharmaceutical technicians that is approved by the Board.

8. "Practitioner" has the meaning ascribed to it in NRS 639.0125.

9. "Prescription drug" means a drug or medicine as defined in NRS 639.007 which:

(a) May be dispensed only upon a prescription order that is issued by a practitioner; and

(b) Is labeled with the symbol "Rx only" pursuant to federal law or regulation.

10. "Public or nonprofit agency" means a health center as defined in 42 U.S.C. § 254b(a) which:

(a) Provides health care primarily to medically underserved persons in a community;

(b) Is receiving a grant issued pursuant to 42 U.S.C. § 254b or, although qualified to receive such a grant directly from the Federal Government, is receiving money from such a grant under a contract with the recipient of that grant; and

(c) Is not a medical facility as defined in NRS 449.0151.

11. "Surgical center for ambulatory patients" has the meaning ascribed to it in NRS 449.019.

12. "Technologic or electronic failure" means an outage of power or internet services that prevents the prescriber or dispenser from transmitting or receiving electronic prescriptions, or unwanted error of a technology-based system, including without limitation, the unavailability or unresponsiveness of the computerized program established pursuant to NRS 453.162.

[Bd. of Pharmacy, § 639.010, 6-26-80] — (NAC A 3-27-90; 6-14-90; 10-1-93; 11-15-93; 5-22-96; 10-24-97; R014-99, 11-3-99; R019-03, 10-21-2003; R041-04, 5-25-2004; R036-07, 1-30-2008; R098-13, 3-28-2014, ***XX-XX-2020***)

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NAC 639.XXX Board approved exemption certificate.

1. A practitioner shall not be exempt from the requirements of NRS 639.23535 unless the practitioner completes a form furnished by the Board certifying that the practitioner is exempt pursuant to NRS 639.23535(2).

2. The certification form required for an exempt practitioner pursuant to subsection 1 shall be maintained as a readily retrievable record by the practitioner at least until December 31, 2021, and made available to the Board upon request.

3. The exemption available pursuant to NRS 639.23535(2) shall only be in effect until December 31, 2021 (Added to NAC by Bd. of Pharmacy, eff. XX-XX-2020).

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NAC 639.7105 Electronic transmission of prescription. (NRS 639.070**,** 639.0745**,** *639.23535***)** Except as otherwise provided in NAC 639.648 and 639.711:

1. A prescription for a dangerous drug ~~or a controlled substance listed in schedule II, III, IV or V~~ may be transmitted to a pharmacy electronically by a practitioner or, if the prescription is for a dangerous drug, the designated agent of the practitioner, if the patient:

(a) Consents to the transmission of the prescription electronically; and

(b) Approves the pharmacy where the prescription will be transmitted.

2. A practitioner shall not transmit a prescription for a controlled substance to a pharmacy electronically unless:

(a) The practitioner is the only person who will have access to the prescription until it is received by the pharmacy; and

(b) All requirements of 21 C.F.R. Part 1311 are satisfied.

3. The designated agent of a practitioner shall not transmit a prescription for a dangerous drug to a pharmacy electronically unless:

(a) The practitioner prescribes the dangerous drug;

(b) The designated agent receives training from the practitioner regarding the electronic transmission of prescriptions and the practitioner keeps written documentation of such training at his or her office; and

(c) The practitioner documents in the medical record of the patient for whom the prescription is being transmitted electronically the intention of the practitioner to prescribe the dangerous drug and to have his or her designated agent transmit the prescription electronically.

4. If the designated agent of a practitioner transmits a prescription electronically to a pharmacy, the practitioner shall review the electronic prescription file not later than 24 hours after the electronic transmission.

5. In addition to the requirements set forth in NRS 639.2353, ***NRS 639.23535,*** and 639.2589, a prescription that is transmitted electronically to a pharmacy must include:

(a) The telephone number of the prescribing practitioner;

(b) The time and date of the transmission; and

(c) The name of the pharmacy to which the prescription is sent.

6. In addition to the requirements set forth in subsection 5 and NRS 639.2353, ***NRS 639.23535,*** and 639.2589, a prescription for a controlled substance that is transmitted electronically to a pharmacy must include:

(a) The registration number from the Drug Enforcement Administration of the prescribing practitioner; and

(b) If the technological capability exists to require such information to be transmitted electronically:

(1) The Nevada controlled substance registration number of the prescribing practitioner;

(2) The indication for use or the diagnosis code; and

(3) The date of the last physical examination of the patient.

7. A pharmacist who receives a prescription that is transmitted electronically shall keep a paper or electronic copy of the prescription for at least 2 years after the pharmacist receives the prescription. The copy of the prescription that is kept must be readily accessible to:

(a) Personnel of the pharmacy who are authorized to access records of prescriptions kept by the pharmacy; and

(b) Members, employees, agents and designees of the Board.

8. A pharmacist shall not dispense a prescription that is transmitted electronically until the pharmacist determines that the prescription complies with the requirements of state and federal law.

9. A prescription that is transmitted and complies with the provisions of this section shall be deemed an original prescription.

10. The Board may suspend the privilege of a practitioner to transmit prescriptions electronically or take any other appropriate action if the Board reasonably suspects that the practitioner or the designated agent of the practitioner has transmitted a prescription electronically that is:

(a) Unlawful;

(b) Fraudulent; or

(c) Not for a legitimate medical purpose.

(Added to NAC by Bd. of Pharmacy, eff. 11-14-97; A by R164-01, 12-17-2001; R160-10, 5-5-2011; R176-12, 12-20-2012; R119-13, 3-28-2014; R154-16, 10-31-2017; R146-17, 5-16-2018; ***XX-XX-2020***)