

LCB File No. R007-99

**PROPOSED REGULATION OF
THE NEVADA STATE BOARD OF MEDICAL EXAMINERS**

EXPLANATION: *Matter in Italics is new* matter in [] is material to be omitted

AUTHORITY: Sec. 2, NRS 630.130, NRS 630.318, NAC 630.395 and NAC 630.400; Sec. 3, NRS 630.130 and NRS 630.160(2)(d)(1); Sec. 4 NRS 630.130; Sec. 5, NRS 630.130, NRS 630.311; Sec. 6, NRS 630.130 and NRS 630.160; Sec. 7, NRS 630.130 and NRS 630.170; Sec. 8, NRS 630.130 and NRS 630.306(2)(b); Sec. 9, NRS 630.130; Sec. 10, NRS 630.130 and NRS 630.275(7).

Section 1. Chapter 630 of NAC is hereby amended by adding thereto the provisions set forth as sections 2 through 5 of this regulation.

Sec. 2. *The cost of any examination required for licensure of a physician or physician's assistant or ordered pursuant to NRS 630.318 or NAC 630.395 and NAC 630.400 shall be borne by the applicant or licensee.*

Sec. 3. *For purposes of satisfying the requirements of NRS 630.160(2)(d)(1), no training received in a fifth pathway program shall satisfy the requirement for graduate education. For purposes of this section, the fifth pathway is a program established by the American Medical Association in 1971 for United States citizens studying abroad at foreign medical schools to allow entry into the first year of graduate medical education in the United States.*

Sec. 4. *A request for board action or consideration shall be in written form and must be received at least fifteen (15) work days before a board meeting in order to be placed on the board's meeting agenda.*

Sec. 5. *For purposes of any investigation conducted pursuant to the provisions of NRS 630.311, whenever the board or its investigative committee becomes aware that a licensed physician or physician's assistant is Human Immunodeficiency Virus (HIV) positive, the investigative committee will immediately conduct an investigation, including, but not limited to the following:*

1. A review of the nature of the physician's or physician's assistant's practice;

2. *The empaneling of a group of public health and infectious disease specialists to review all circumstances of the physician's or physician's assistant's practice and advise the investigative committee, in accordance with currently recommended Centers for Disease Control and Prevention guidelines on "Health Care Workers infected with HIV," what action, if any, the investigative committee should take concerning the HIV positive physician or physician's assistant.*

3. *The taking of such action as is authorized or required by statute.*

Sec. 6 NAC 630.080 is hereby amended to read as follows:

630.080 1. For the purposes of paragraph (e) of subsection 2 of NRS 630.160, an applicant for a license to practice medicine must pass:

(a) A written examination concerning the statutes and regulations relating to the practice of medicine in this state; and

(b) The Special Purpose Examination, unless within 10 years before the date of his application for a license to practice medicine in this state, the applicant has passed:

(1) Part III of the examination given by the National Board of Medical Examiners;

(2) Component II of the Federation Licensing Examination;

(3) Step III of the United States Medical Licensing Examination;

(4) All parts of the examination to become a licentiate of the Medical Council of Canada;

(5) The examination for certification by a specialty board or subspecialty board of the American Board of Medical Specialties and received certification from that board;

(6) The examination for certification by a specialty board or subspecialty board of the American Board of Medical Specialties that issued the primary certification if the examination for recertification was a written and proctored examination; or

(7) The Special Purpose Examination.

2. For any examination conducted by the board for a license to practice medicine, an applicant must answer correctly at least 75 percent of the questions propounded. *The board will utilize the Federation of State Medical Boards of the United States, Inc.'s weighted*

average score of 75 to satisfy the required score of 75 percent for passage of the Special Purpose Examination and the United States Medical Licensing Examination.

3. The Board will authorize the Federation of State Medical Boards of the United States, Inc. to administer the Special Purpose Examination or United States Medical Licensing Examination to any candidate, whether or not the candidate would qualify for licensure in Nevada.

4. An applicant for licensure is not required to complete any postgraduate training prior to taking the United States Medical Licensing Examination, Step 3, and is entitled to an unlimited number of attempts to pass and an unlimited amount of time to complete Steps 1, 2, and 3 of the United States Medical Licensing Examination.

5. Graduates of foreign medical schools who are applicants for licensure in the state of Nevada must have taken and passed the examination of the Educational Commission for Foreign Medical Graduates or the Foreign Medical Graduates Examination in the Medical Sciences prior to taking and passing the United States Medical Licensing Examination.

Sec. 7. NAC 630.170 is hereby amended to read as follows:

630.170 A license issued to an alien automatically terminates if he loses his entitlement to remain and work in the United States. *Such license shall clearly state thereon:*

This license is issued subject to any limitations imposed by the United States Department of Justice, Immigration and Naturalization Service. This license becomes void immediately upon the termination of the right of the person named hereon to lawfully remain and work in the United States.

Sec. 8. NAC 630.230 is hereby amended to read as follows:

630.230 1. A [physician] licensee shall not:

- (a) Falsify records of health care;
- (b) Falsify the medical records of a hospital so as to indicate his presence at a time when he was not in attendance or falsify those records to indicate that procedures were performed by him which were in fact not performed by him;
- (c) [Engage in the practice of writing prescriptions for controlled substances in such excessive amounts as to constitute a departure from prevailing standards of acceptable medical practice;]

[(d)] Render professional services to a patient while the [physician] licensee is under the influence of alcohol or any controlled substance or is in an impaired mental or physical condition;

[(e)] (d) Acquire any controlled substances from any pharmacy or other source by misrepresentation, fraud, deception or subterfuge;

[(f)] Write a prescription for controlled substances for any person without an appropriate examination which confirms the medical necessity for the controlled substances;]

[(g)] (e) Prescribe anabolic steroids for any person to increase muscle mass for competitive or athletic purposes;

[(h)] (f) Make an unreasonable additional charge for tests in a laboratory, radiological services or other services for testing which are ordered by the [physician] licensee and performed outside his own office;

[(i)] (g) Treat any patient in a manner not recognized scientifically as being beneficial;

[(j)] (h) Prescribe controlled substances listed in schedule II pursuant to NAC 453.520 or schedule III pursuant to NAC 453.530, controlled substance analogs, chorionic gonadotrophic hormones, thyroid preparations or thyroid synthetics for the control of weight;

[(k)] (i) Allow any person to act as a medical assistant in the treatment of a patient of the [physician] licensee, unless the medical assistant has sufficient training to provide the assistance;

[(l)] (j) Fail to provide adequate supervision of a medical assistant who is employed or supervised by the [physician] licensee; [or]

[(m)] (k) Fail to provide adequate supervision of a physician's assistant or an advanced practitioner of nursing *if the licensee is a physician* [.];

(l) Fail to honor a patient's advance directive without informing the patient, surrogate or guardian, and without documenting in the patient's record the reason(s) for not honoring the patient's request(s) contained therein;

(m) Fail to adequately prescribe controlled substances for pain control in accordance with accepted prevailing standards for the practice of medicine as contained in these regulations; or,

(n) Engage in the practice of writing prescriptions for controlled substances for the treatment of pain, acute or chronic, in such a manner as to constitute a departure from prevailing standards of acceptable medical practice, as set forth in these regulations.

(1) For purposes of this subsection, it is not the quantity or chronicity of prescribing that are the determining factors as to whether a licensee is acting within the boundaries of accepted prevailing standards for the practice of medicine, but rather whether there has been an evaluation of a patient resulting in the establishment of a treatment plan for the patient; an informed consent and agreement for treatment of the patient; periodic reviews and consultations with the patient; and, medical records that reflect all the above and include therein assessments made concerning possible substance abuse, tolerance, analgesic tolerance, physical dependence, addiction, or pseudo addiction, of the patient. It is the licensee's duty to control pain, as defined in these regulations, for its duration, utilizing the procedures set out in these regulations, while effectively addressing other aspects of the patient's functioning, including physical, psychological, social and work-related factors.

(2) For purposes of this subsection, the following definitions apply:

(a) "Evaluation of the Patient" Means an appropriate medical history and physical examination must be conducted and documented in the medical record. The medical record shall document the nature and intensity of the pain, current and past treatments for pain, underlying or coexisting diseases or conditions, the effect of the pain on physical and psychological function, and any history of substance abuse. The medical record shall document the presence of one or more recognized medical indications for the use of a controlled substance.

(b) "Treatment Plan" Means a written treatment plan that shall state objectives that will be used to determine treatment success, such as pain relief and improved physical and psychosocial function, and shall indicate if any further diagnostic evaluations or other treatments are planned. After treatment begins, the licensee shall adjust medication therapy to the individual medical needs of each patient. Other treatment modalities or a rehabilitation program may be necessary depending on the etiology of the pain and the extent to which the pain is associated with physical and psychosocial impairment.

(c) **"Informed Consent and Agreement for Treatment"** Means the licensee shall discuss the risks and benefits of the use of controlled substances with the patient, persons designated by the patient, or with the patient's surrogate or guardian if the patient is incompetent. The patient shall receive prescriptions from one licensee and one pharmacy where possible. If the patient is determined to be at high risk for medication abuse or have a history of substance abuse, the licensee shall employ the use of a written agreement between licensee and patient outlining patient responsibilities including (1) urine/serum medication levels screening when requested (2) number and frequency of all prescription refills and (3) reasons for which medication therapy may be discontinued (i.e., violation of agreement).

(d) **"Periodic Review"** Means at reasonable intervals based upon the individual circumstance of the patient, the licensee shall review the course of treatment and any new information about the etiology of the pain. Continuation or modification of medication therapy depends on the licensee's evaluation of progress toward stated treatment objectives such as improvement in patient's pain intensity and improved physical and/or psychosocial function, such as ability to work, need of health care resources, activities of daily living, and quality of social life. If treatment goals are not being achieved, despite medication adjustments, the licensee shall re-evaluate the appropriateness of continued treatment. The licensee shall monitor patient compliance in medication usage and related treatment plans.

(e) **"Consultation"** Means the licensee shall refer the patient, as necessary, for additional evaluation and treatment in order to achieve treatment objectives. Special attention should be given to those pain patients who are at risk for misusing their medications and those whose living arrangement pose a risk for medication misuse or diversion. The management of pain in patients with a history of substance abuse or with a comorbid psychiatric disorder may require extra care, monitoring, documentation, and consultation with or referral to an expert in the management of such patients.

(f) **"Medical Records"** Means the licensee shall keep accurate and complete records to include (1) the medical history and physical examination (2) diagnostic, therapeutic and laboratory results (3) evaluations and consultations (4) treatment objectives (5) discussion of risks and benefits (6) treatments (7) medications (including date, type, dosage, and quantity prescribed) (8) instructions and agreements and (9) periodic reviews. Records

shall remain current and be maintained in an accessible manner and readily available for review.

(g) **"Pain"** is an unpleasant sensory and emotional experience associated with actual or potential tissue damage or described in terms of damage.

(h) **"Acute Pain"** is the normal, predicted physiological response to an adverse chemical, thermal, or mechanical stimulus and is associated with surgery, trauma and acute illness. It is generally time limited and is responsive to opioid therapy, among other therapies.

(i) **"Chronic Pain"** is a pain state which is persistent and in which the cause of the pain cannot be removed or otherwise treated. Chronic pain may be associated with a long-term incurable or intractable medical condition or disease.

(j) **"Tolerance"** is a physiologic state resulting from regular use of a medication in which an increased dosage is needed to produce the same effect or a reduced effect is observed with a constant dose.

(k) **"Analgesic Tolerance"** is the need to increase the dose of opioid to achieve the same level of analgesia. Analgesic tolerance may or may not be evident during opioid treatment and does not equate with addiction.

(l) **"Physical Dependence"** on a controlled substance is a physiologic state of neuroadaptation which is characterized by the emergence of a withdrawal syndrome if medication use is stopped or decreased abruptly, or if an antagonist is administered. Physical dependence is an expected result of opioid use. Physical dependence, by itself, does not equate with addiction.

(m) **"Addiction"** is a neurobehavioral syndrome with genetic and environmental influences that results in psychological dependence on the use of medications for their psychic effects and is characterized by compulsive use despite harm. Addiction may also be referred to by terms such as "drug dependence" and "psychological dependence." Physical dependence and tolerance are normal physiological consequences of extended opioid therapy for pain and should not be considered addiction.

(n) *"Pseudo addiction" is a pattern of medication-seeking behavior of pain patients who are receiving inadequate pain management that can be mistaken for addiction.*

(o) *"Substance Abuse" is the use of any substance(s) for non-therapeutic purposes; or use of medication for purposes other than those for which it is prescribed.*

2. As used in this section:

(a) "Controlled substance analog" means:

(1) A substance whose chemical structure is substantially similar to the chemical structure of a controlled substance listed in schedule II pursuant to NAC 453.520 or schedule III pursuant to NAC 453.530; or

(2) A substance which has, is represented as having, or is intended to have a stimulant, depressant, or hallucinogenic effect on the central nervous system of a person that is substantially similar to, or greater than, the stimulant, depressant, or hallucinogenic effect on the central nervous system of a person of a controlled substance listed in schedule II pursuant to NAC 453.520 or schedule III pursuant to NAC 453.530.

(b) "Medical assistant" means any person who:

(1) Is employed by a [physician] *licensee*;

(2) Is under the direction and supervision of the [physician] *licensee*;

(3) Assists in the care of a patient; and

(4) Is not required to be certified or licensed to provide such assistance by any administrative agency.

Sec. 9. NAC 630.270 is hereby amended to read as follows:

630.270 A copy of the disciplinary findings and order of the board will be served by personal service or by certified mail upon [:

1.T] the person affected by them at the address of the person on file with the board [;] and **[2. H]** his attorney of record, *and by United States mail upon all hospitals in the geographical area in which the physician or physician's assistant practices, and the media.*

Sec. 10. NAC 630.380 is hereby amended to read as follows:

630.380 1. A physician's assistant is subject to disciplinary action by the board if, after notice and hearing in accordance with this chapter, the board finds that the physician's assistant:

(a) Has willfully and intentionally made a false or fraudulent statement or submitted a forged or false document in applying for a license.

(b) Has held himself out or permitted another to represent him to be a licensed physician;

(c) Has performed medical services otherwise than at the direction or under the supervision of the supervising physician;

(d) Has performed medical services which have not been approved by his supervising physician;

(e) Has engaged or is engaging in the performance of medical services when he is unable to do so with reasonable skill and safety to patients because of his excessive use of alcohol or any controlled substance or because of any mental or physical condition or illness;

(f) Is guilty of gross or repeated malpractice in the performance of medical services for acts committed before October 1, 1997;

(g) Is guilty of malpractice in the performance of medical services for acts committed on or after October 1, 1997;

(h) Is guilty of disobedience of any order of the board or an investigative committee of the board, provision in the regulations of the state board of health or the state board of pharmacy or provision of this chapter;

(i) Is guilty of administering, dispensing or possessing any controlled substance otherwise than in the course of legitimate medical services or as authorized by law and his supervising physician;

(j) Has been convicted of a violation of any federal or state law regulating the prescribing, possession, distribution or use of a controlled substance;

(k) Is not competent to provide medical services;

(l) Has been convicted of a felony or any offense involving moral turpitude; [or]

(m) Failed to notify the board of loss of certification by the National Commission on Certification of Physician's Assistants; *or*

(n) Is guilty of violating any of the provisions of NRS 630.301 through NRS 630.3065, inclusive, which are grounds for initiating disciplinary action against a licensed physician in the state of Nevada.

2. To institute disciplinary action against a physician's assistant, a written complaint specifying the charges, must be filed with the board by the investigative committee of the board.

3. *A physician's assistant is not subject to disciplinary action solely for prescribing or administering to a patient under his care a controlled substance which is listed in schedule 2, 3, 4, or 5 by the state board of pharmacy pursuant to NRS 453.146, if the controlled substance is lawfully prescribed or administered for the treatment of intractable pain in accordance with accepted standards for the practice of medicine.*

**PROPOSED REGULATION OF THE
NEVADA STATE BOARD OF MEDICAL EXAMINERS**

INFORMATIONAL STATEMENT

Pursuant to the provisions of NRS 233B.066, the following informational statement is submitted:

**DESCRIPTION OF HOW PUBLIC COMMENT WAS SOLICITED
SUMMARY OF THE PUBLIC RESPONSE
EXPLANATION HOW OTHER INTERESTED PERSONS MAY OBTAIN
A COPY OF THE SUMMARY**

How public comment was solicited:

The Nevada State Board of Medical Examiners published a Notice of Workshops to solicit comments on proposed regulations of the Nevada State Board of Medical Examiners, to be conducted on Wednesday, February 24, 1999, at the hour of 10:00 o'clock a.m., or as soon thereafter as it may be conducted on that date, at the Sawyer State Office Building, 555 E. Washington Avenue, Room #4412E, Las Vegas, Nevada; and, on Thursday, February 25, 1999, at the hour of 10:00 o'clock a.m., or as soon thereafter as it may be conducted on that date, at the offices of the Board at 1105 Terminal Way, Suite 310, Reno, Nevada.

The Nevada State Board of Medical Examiners published a Notice of Intent to act on proposed regulations of the Nevada State Board of Medical Examiners, noticing a public hearing at 9:30 o'clock a.m., on Monday, March 15, 1999, or as soon thereafter as it may be heard on that date, at the Nevada State Capitol, Old Assembly Chambers, 2nd floor, Carson City, Nevada.

In the notices the public were notified that a copy of the proposed changes in the regulations were on file at the State Library, 100 Stewart St., Carson City, Nevada; available at the offices of the Board at 1105 Terminal Way, Reno, Nevada; in all counties in the state of Nevada in which the Board does not maintain an office; at the main public library; in the State of Nevada Register of Administrative Regulations which is prepared and published monthly by the Legislative Counsel Bureau pursuant to NRS 233B.0653; and, on the Internet at <http://www.leg.state.nv.us>, as well as posted at the following locations:

Washoe County Court House - Reno, Nevada
Reno City Hall - Reno, Nevada
Elko County Court House - Elko, Nevada
White Pine County Court House - Ely, Nevada
Clark County Health Department - Las Vegas, Nevada
Las Vegas Office of the State Attorney General
Carson City Office of the State Attorney General
Reno Office of the Nevada State Board of Medical Examiners

Carson City Public Library - Carson City, Nevada
Churchill County Public Library - Fallon, Nevada
Clark County Public Library - Las Vegas, Nevada
Douglas County Public Library - Minden, Nevada
Elko County Public Library - Elko, Nevada
Esmeralda County Public Library - Goldfield, Nevada
Eureka County Public Library - Eureka, Nevada
Humboldt County Public Library - Winnemucca, Nevada
Lander County Public Library - Battle Mountain, Nevada
Lincoln County Public Library - Pioche, Nevada
Lyon County Public Library - Yerington, Nevada
Mineral County Public Library - Hawthorne, Nevada
Nye County Public Library - Tonopah, Nevada
Pershing County Public Library - Lovelock, Nevada
Storey County Public Library - Virginia City, Nevada
White Pine County Public Library - Ely, Nevada

Additionally, a complete set of the Notices of the Workshops and Intent to Adopt the regulations, with a copy of the proposed regulations were sent to all persons who have requested to be included on a mailing list with the Board.

Summary of the public response:

The public response was almost negligible. The public response at the hearing conducted in Las Vegas consisted of two (2) licensed physician's assistants in the state of Nevada who were in support of the proposed changes in their entirety, and one (1) had a question as to whether or not the board should consider expanding on the HIV regulation to include other infectious diseases. The board discussed that suggestion at its meeting when it adopted the regulations and instructed staff to come back in the future with a possible proposal to amend the regulation to include other infectious diseases.

The public response at the hearing conducted in Reno consisted of one (1) person, the Executive Director of the Nevada State Physician's Association who represented that his organization was in full accord in supporting the adoption of the regulations as proposed.

How other interested persons may obtain a copy of the public response to the regulations:

On file with the Board at the offices of the Board at 1105 Terminal Way, Suite 301, Reno, Nevada, is a complete transcript of both workshops and both hearings conducted on the regulations.

Any member of the public may visit the offices of the Board and may review any or all of transcript referred to above. Also, any member of the public may request copies of the entire transcript of all the proceedings by contacting the court reporter and requesting the preparation of a transcript.

The court reporter may be contacted at:

Discovery Reporting
Certified Shorthand Reporters
935 Jones Street
Reno, Nevada 89503
(775) 329-3500

The number of persons who attended each hearing:

Workshop, Wednesday, February 24, 1999
Sawyer State Office Building,
555 E. Washington Avenue, Room #4412A
Las Vegas, Nevada
Two (2) people

Workshop, Thursday, February 15, 1999
Offices of the Board
1105 Terminal Way, Suite 301
Reno, Nevada
One (1) person

Board meeting, Monday, March 15, 1999
Nevada State Capitol,
Old Assembly Chambers, 2nd floor
Carson City, Nevada
Approximately fifty (50) persons

The number of persons who testified at each hearing:

Workshop, Wednesday, February 24, 1999
Sawyer State Office Building
555 E. Washington Avenue, Room #4412A
Las Vegas, Nevada
Two (2) people

Workshop, Thursday, February 25, 1999
Offices of the Board
1105 Terminal Way, Suite 301
Reno, Nevada
One (1) person

Board Meeting, Monday, March 15, 1999
Nevada State Capital
Old Assembly Chambers, 2nd floor
Carson City, Nevada
No person(s) testified

The number of persons who submitted written statements:

None

**HOW COMMENT WAS SOLICITED FROM AFFECTED BUSINESSES,
A SUMMARY OF THEIR RESPONSE, AND
HOW INTERESTED PERSONS MAY OBTAIN A COPY OF THE SUMMARY**

The comments, conclusions, and information set out above and all information contained thereunder applies to this portion of the informational statement as well.

**THE REGULATIONS WERE ADOPTED WITHOUT CHANGE TO
THE PROPOSED REGULATIONS**

**THE ESTIMATED ECONOMIC EFFECT OF THE REGULATIONS ON THE
BUSINESS WHICH THE BOARD REGULATES AND ON THE PUBLIC**

The economic effect of the regulations on the medical profession:

None

The economic effect of the regulations on the general public:

Same as above

**THE ESTIMATED COST TO THE NEVADA STATE BOARD OF MEDICAL
EXAMINERS TO ENFORCE THE PROPOSED REGULATIONS**

The Nevada State Board of Medical Examiners estimates no additional cost to the agency to enforce the proposed regulations.

**THE REGULATIONS OF THE NEVADA STATE BOARD OF MEDICAL
EXAMINERS
DO NOT OVERLAP OR DUPLICATE ANY REGULATIONS OF ANY OTHER STATE
OR GOVERNMENTAL AGENCIES, INCLUDING THE FEDERAL GOVERNMENT**

**THE REGULATIONS OF THE NEVADA STATE BOARD OF MEDICAL
EXAMINERS
DO NOT INCLUDE PROVISIONS WHICH ARE MORE STRINGENT THAN A**

**FEDERAL REGULATION WHICH REGULATES THE SAME ACTIVITY.
THE NEW REGULATIONS DO NOT PROVIDE FOR A NEW FEE.**