ADOPTED REGULATION OF THE

STATE BOARD OF PHARMACY

LCB File No. R156-04

Effective October 22, 2004

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

AUTHORITY: §§1 and 2, NRS 639.070.

A REGULATION relating to pharmacists; prohibiting pharmacists from filling or dispensing certain prescriptions for dangerous drugs and controlled substances unless the pharmacist first verifies the prescription; and providing other matters properly relating thereto.

Section 1. NAC 639.752 is hereby amended to read as follows:

639.752 1. Except as otherwise provided in this section and NRS 639.235, a [~~prescription must not be filled or dispensed~~] ***pharmacist shall not fill a prescription for, or dispense, a dangerous drug or a controlled substance*** if the prescription is:

(a) Written by a practitioner who is not licensed to practice in this [~~state;~~] ***State, but is authorized by the laws of another state to prescribe;***

(b) For a patient who resides in a state other than [~~Nevada or~~] the state in which the ***prescribing*** practitioner's practice is located; [~~and~~]

(c) Requested to be furnished in a manner [~~inconsistent with NAC 639.710.;~~

~~2. A prescription described in subsection 1 that is not a controlled substance listed in schedule II, III or IV may be filled and dispensed if:~~

~~(a) The patient has sought payment for the prescription from a managed care system or insurance plan in which the patient is enrolled that has contracted with the pharmacy for the provision of pharmaceutical services; or~~

~~(b) A pharmacist has spoken with the patient and the practitioner and has ascertained that the prescription is valid and that a bona fide therapeutic relationship exists between the patient and the practitioner. In determining whether a bona fide therapeutic relationship exists, the pharmacist shall ascertain the date and place at which the practitioner physically examined the patient and shall record that information on the prescription or in another readily retrievable record.~~

~~3. As used in this section, "bona fide therapeutic relationship" means a relationship in which a practitioner has physically examined a patient and, as a result of the examination, has diagnosed a condition for which a given drug therapy is prescribed.]~~ ***other than by dispensing directly to the patient, or an agent of the patient, in person; and***

(d) To be paid for in full, in cash or cash equivalent, at the time the prescription is dispensed,

➥ ***unless the pharmacist first verifies the prescription as set forth in subsection 2.***

2. A pharmacist who verifies a prescription pursuant to this section must:

(a) Speak with the patient or the prescribing practitioner;

(b) Establish that:

(1) The prescription is authentic; and

(2) A bona fide relationship between the patient and the prescribing practitioner did exist when the prescription was written; and

(c) Record on the prescription or in the prescription record in the pharmacy's computer:

(1) The name of the person with whom he spoke concerning the prescription;

(2) The date and time of the conversation; and

(3) The date and time the patient was physically examined by the prescribing practitioner.

3. Subsection 1 does not apply to a pharmacist who refills a prescription he has previously filled if he verified the prescription before filling it the first time.

4. For the purposes of this section, a bona fide relationship between the patient and the prescribing practitioner shall be deemed to exist if the patient was physically examined by the practitioner within the 6 months immediately preceding the date the prescription was issued.

5. As used in this section, "cash equivalent" includes, without limitation:

(a) A check;

(b) A credit card;

(c) A draft;

(d) An electronic funds transfer; and

(e) A prescription drug discount card or other device obtained pursuant to the Medicare Prescription Drug, Improvement, and Modernization Act of 2003, Public Law 108-173, or any regulations adopted pursuant thereto.

Sec. 2. NAC 639.945 is hereby amended to read as follows:

639.945 1. The following acts or practices by a holder of any license, certificate or registration issued by the Board or any employee of any business holding any such license, certificate or registration are declared to be, specifically but not by way of limitation, unprofessional conduct and conduct contrary to the public interest:

(a) Manufacturing, compounding, selling, dispensing or permitting to be manufactured, compounded, sold or dispensed substandard drugs or preparations.

(b) Except as otherwise provided in NRS 639.2583 to 639.2807, inclusive, for substitutions of generic drugs, dispensing or causing to be dispensed a different drug or brand of drug in place of the drug or brand of drug ordered or prescribed, unless the express permission of the orderer or prescriber is obtained and, in the case of a written prescription, unless the following information is recorded on the prescription by the person obtaining permission:

(1) The date on which the permission was granted;

(2) The name of the practitioner granting the permission;

(3) The name of the person obtaining the permission;

(4) The name of the drug dispensed; and

(5) The name of the manufacturer or distributor of the drug.

(c) Using secret formulas.

(d) Failing strictly to follow the instructions of the person writing, making or ordering a prescription as to its filling or refilling, the content of the label or giving a copy of the prescription to any person except as permitted by law.

(e) Failing to confer with the person writing, making or ordering a prescription if there is an error or omission in it which should be questioned.

(f) Operating a pharmacy at a location other than the location at which the pharmacy is licensed to operate.

(g) Supplying or diverting drugs, biologicals, medicines, substances or devices which are legally sold in pharmacies or by wholesalers, so that unqualified persons can circumvent any law pertaining to the legal sale of such articles.

(h) Performing or in any way being a party to any fraudulent or deceitful practice or transaction.

(i) Performing any of his duties as the holder of a license, certificate or registration issued by the Board, or as the owner of a business or an entity licensed by the Board **,** in an incompetent, unskillful or negligent manner.

(j) Aiding or abetting a person not licensed to practice pharmacy in the State of Nevada.

(k) Performing any act, task or operation for which licensure, certification or registration is required without the required license, certificate or registration.

(l) Violating any term or condition of a subpoena or order issued by the Board or the staff of the Board.

(m) Failing to provide any document, data or information that is required to be made and maintained pursuant to chapters 453, 454, 585 and 639 of NRS and chapters 453, 454, 585 and 639 of NAC to a member of the Board or a member of the staff of the Board upon his request.

(n) Dispensing a drug as a dispensing practitioner to a patient with whom the dispensing practitioner does not have a bona fide therapeutic relationship.

(o) Prescribing a drug as a prescribing practitioner to a patient with whom the prescribing practitioner does not have a bona fide therapeutic relationship.

2. The owner of any business or facility licensed, certified or registered by the Board is responsible for the acts of all personnel in his employ.

3. As used in this section, "bona fide therapeutic relationship" ~~[has the meaning ascribed to it in subsection 3 of NAC 639.752.]~~ ***means a relationship in which a practitioner has:***

(a) Physically examined a patient; and

(b) As a result of the examination, diagnosed a condition for which a given drug therapy is prescribed,

➥ within the 6 months immediately preceding the date the practitioner dispenses or prescribes a drug to the patient.

NOTICE OF ADOPTION OF PROPOSED REGULATION
LCB File No. R156-04

The State Board of Pharmacy adopted regulations assigned LCB File No. R156-04 which pertain to chapter 639 of the Nevada Administrative Code on September 2, 2004.

Notice date: 7/27/2004 **Date of adoption by agency:** 9/2/2004
Hearing date: 9/2/2004 **Filing date:** 10/22/2004

INFORMATIONAL STATEMENT

The informational statement required by NRS 233B.066 numerically conforms to the subsections of the statute as follows:

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.

Public comment was solicited through public notices posted in county courthouses and through mailings to interested parties.

All interested parties may obtain a summary of public response by written or verbal request to: Nevada State Board of Pharmacy, 555 Double Eagle Court, Suite 1100, Reno, Nevada, 89521.

2. THE NUMBER OF PERSONS WHO: (A) ATTENDED EACH HEARING; (B) TESTIFIED AT EACH HEARING; AND (C) SUBMITTED TO THE AGENCY WRITTEN STATEMENTS.

The number of persons who attended the hearing was 1.
The number of persons who testified at the hearing was 1.
The number of agency submitted statements was 1.

3. A DESCRIPTION OF HOW COMMENT WAS SOLICITED FROM AFFECTED BUSINESSES, A SUMMARY OF THEIR RESPONSE, AND AN EXPLANATION HOW OTHER INTERESTED PERSONS MAY OBTAIN A COPY OF THE SUMMARY.

Comments were solicited from affected businesses through posting of public notices in the county courthouses, by direct mailings to all interested persons who have requested notices of board of pharmacy meeting agendas and by direct mailings to professional and trade associations.

There was one response from affected businesses relative to this proposed regulation.

All interested parties may obtain a summary of public response by written or verbal request to: Nevada State Board of Pharmacy, 555 Double Eagle Court, Suite 1100, Reno, Nevada, 89521.

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 proposed regulation was amended slightly as a result of testimony offered at the hearing.

5. THE ESTIMATED ECONOMIC EFFECT OF THE REGULATION ON THE BUSINESS WHICH IT IS TO REGULATE AND ON THE PUBLIC. THESE MUST BE STATED SEPARATELY, AND IN EACH CASE MUST INCLUDE:

A) BOTH ADVERSE AND BENEFICIAL EFFECTS.

This regulation should have no economic impact on affected businesses or on the public.

B) BOTH IMMEDIATE AND LONG-TERM EFFECTS.

This regulation will have no immediate or long-term economic effects on business or the public.

6. THE ESTIMATED COST TO THE AGENCY FOR ENFORCEMENT OF THE PROPOSED REGULATION.

There will be no additional or special costs incurred by the board for enforcement of this regulation.

7. A DESCRIPTION OF ANY REGULATIONS OF OTHER STATE OR GOVERNMENT AGENCIES WHICH THE PROPOSED REGULATION OVERLAPS OR DUPLICATES 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.

The Board of Pharmacy is not aware of any similar regulations of other state or government agencies that the proposed regulation overlaps or duplicates.

8. IF THE REGULATION INCLUDES PROVISIONS WHICH ARE MORE STRINGENT THAN A FEDERAL REGULATION WHICH REGULATES THE SAME ACTIVITY, A SUMMARY OF SUCH PROVISIONS.

The Board of Pharmacy is not aware of any similar regulations of the same activity in which the federal regulation is more stringent.

9. IF THE REGULATION PROVIDES A NEW FEE OR INCREASES AN EXISTING FEE, THE TOTAL ANNUAL AMOUNT THE AGENCY EXPECTS TO COLLECT AND THE MANNER IN WHICH THE MONEY WILL BE USED.

This regulation does not provide a new or increase of fees.