

**PROPOSED REGULATION OF THE
STATE BOARD OF OSTEOPATHIC MEDICINE**

LCB File No. R069-16

**NOTICE OF WORKSHOP FOR THE ADOPTION OF REGULATIONS OF THE
NEVADA STATE BOARD OF OSTEOPATHIC MEDICINE**

NOTICE IS HEREBY GIVEN that the Nevada State Board of Osteopathic Medicine will hold a public workshop at **5:30 p.m. on Tuesday, June 14, 2016 at 2275 Corporate Circle, Suite 210, Henderson, Nevada 89074.** The purpose of the workshop is to receive comments from all interested persons regarding the potential adoption of regulations that pertain to chapter 633 of the Nevada Administrative Code.

The purpose of the proposed regulation is to describe the standard of care for the prescribing of opioids for the treatment of pain. A copy of the proposed language that will be considered by the Nevada State Board of Osteopathic Medicine is attached hereto.

Persons wishing to comment upon the proposed action of the Nevada State Board of Osteopathic Medicine may appear at the scheduled public workshop or may address their comments, data, views, or arguments, in written form, to Barbara Longo, Executive Director, 2275 Corporate Circle, Suite 210, Henderson, Nevada 89074. Written submissions must be received by the Nevada State Board of Osteopathic Medicine on or before June 6, 2016. If no person who is directly affected by the proposed action appears to request time to make an oral presentation, the Nevada State Board of Osteopathic Medicine may proceed immediately to act upon any written submissions.

Members of the public who require special accommodations or assistance at the workshop are required to notify Barbara Longo, Executive Director, in writing at the Nevada State Board of Osteopathic Medicine, 2275 Corporate Circle, Suite 210, Henderson, Nevada 89074, Telephone: (702) 732-2147, no later than June 6, 2016.

A copy of this notice and the regulation to be discussed will be on file at the State Library, 100 Stewart Street, Carson City, Nevada, for inspection by members of the public during business hours. Additional copies of the notice and the regulation to be adopted will be available at the Nevada State Board of Osteopathic Medicine, 2275 Corporate Circle, Suite 210, Henderson, Nevada 89074, and in all counties in which an office of the agency is not maintained, at the main public library, for inspection and copying by members of the public during business hours. This notice and the text of the proposed regulation are also available 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>. Copies of this notice and the proposed regulation will also be mailed to members of the public upon request. A reasonable fee may be charged for copies if it is deemed necessary.

This notice of workshop has been posted at the following locations:

Nevada State Board of Osteopathic Medicine - 2275 Corporate Circle, Suite 210,
Henderson, Nevada 89074

Nevada State Board of Osteopathic Medicine website: <http://nvbdo.nv.gov>

Office of the Attorney General - 100 N. Carson St., Carson City, NV 89701

Office of the Attorney General - Grant Sawyer Bldg., 555 E. Washington Ave., Las Vegas,
NV 89101

State Library and Archives -100 N. Stewart Street, Carson City, NV 89701 or at:
Notice.NV.GOV

Carson City Library – 900 N. Roop Street, Carson City, Nevada 89701

Churchill County Library - 553 S. Maine Street, Fallon, Nevada 89406

Clark County Library – 1401 E. Flamingo Road, Las Vegas, Nevada 89119

Douglas County Public Library - 1625 Library Lane, Minden, Nevada 89423

Elko County Library - 720 Court Street, Elko, Nevada 89801

Esmeralda County Library - 10 Montezuma Way, Silverpeak, Nevada 89047

Eureka Branch Library - 210 S. Monroe, Eureka, Nevada 89316

Humboldt County Library – 85 E. 5th Street, Winnemucca, Nevada 89445

Lincoln County Library – 63 Main Street, Pioche, Nevada 89043

Lyon County Central Library – 20 Nevin Way, Yerington, Nevada 89447

Mineral County Library – 110 1st Street, Hawthorne, Nevada 89415

Pershing County Library – 1125 Central Avenue, Lovelock, Nevada 89419

Storey County Library - 95 South R Street, Virginia City, Nevada 89440

Tonopah Library – 167 S. Central Street, Tonopah, Nevada 89049

Washoe County Library – 301 S. Center Street, Reno, Nevada 89505

White Pine County Library – 950 Campton Street, Ely, Nevada 89301

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STATE BOARD OF OSTEOPATHIC MEDICINE**

LCB File No. R069-16

May 12, 2016

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

AUTHORITY: NRS 633.291 and NRS 633.521(1)(c).

A REGULATION relating to the ethical and disciplinary standards related to the assessment, diagnosis, treatment, and other related medical obligations of patients with pain for whom opioids are prescribed.

Section 1. NAC ch. 633 is amended to add the following new language:

1. In creating, interpreting, and applying this regulation, the Board intends to set out the basic standard of care expected of all of Nevada's osteopathic physicians who undertake to treat their patients with opioids for the treatment of pain based upon the best available, medically sound resources. The assessment and treatment of pain is a normal and regular part of the practice of osteopathic medicine to assure, as much as is medically possible, the healing, function, and comfort of patients. The use of opioids for the treatment of pain, whether acute, chronic, or intractable, bears inherent risks related to the known and expected side effects for such medications and misuse, abuse, diversion, and addiction by some patients. An osteopathic physicians or physician assistant is expected to use and document his or her best clinical judgment to balance the unique risks and benefits of opioid therapy for a particular patient.

2. The Board sought out the best available resources in the creation of these regulations. Because these regulations are based upon several of these resources, when interpreting, applying, and determining an osteopathic physician's or physician assistant's compliance with the requirements of these regulations, the Board may refer to and rely upon:

(a) The Model Policy for the Use of Opioid Analgesics in the Treatment of Chronic Pain (July 2013 edition) published by the Federation of State Medical Boards;

(b) The Clinical Guidelines for the Use of Chronic Opioid Therapy in Chronic Noncancer Pain published in the Journal of Pain, Volume 10, Number 2 (February 2009); and

(c) The CDC Guideline for Prescribing Opioids for Chronic Pain – United States, 2016 published by the Center for Disease Control and Prevention of the United States Department of Health and Human Services.

Sec. 2. NAC 633.350 is amended to read as follows:

633.350 1. For the purposes of this chapter and chapter 633 of NRS, an osteopathic physician engages in unethical conduct if he or she:

(a) Engages in sexual misconduct with a patient;

(b) Abandons a patient;

(c) Willfully makes and files false reports, records or claims in the osteopathic physician's practice;

(d) Willfully fails to file or record a medical report required by law, willfully impedes or obstructs the filing or recording of such a report, or willfully induces another person to fail to file or record such a report;

(e) Fails to generate or create medical records relating to the diagnosis, treatment and care of a patient;

(f) Prescribes ~~{a controlled substance in a manner or an amount that the Board determines is excessive}~~ *an opioid in violation of the provisions of Sections 3 and 4 of this regulation;*

(g) Fails to comply with the terms of an agreement with a diversion program approved by the Board;

(h) Fails to comply with an order of the Board;

(i) Violates the provisions of NRS 633.505 concerning retaliation or discrimination against an employee;

(j) Violates the provisions of NRS 629.061 concerning making the health care records of a patient available for physical inspection and furnishing a copy of the health care records;

(k) Fails to provide adequate supervision of a medical assistant who is employed or supervised by the osteopathic physician; or

(l) Engages in any other conduct that the Board determines constitutes unfitness to practice osteopathic medicine.

2. For the purposes of this chapter and chapter 633 of NRS, a physician assistant engages in unethical conduct if the physician assistant engages in any conduct which constitutes unethical conduct by an osteopathic physician pursuant to paragraphs (a) to (i), inclusive, of subsection 1.

3. As used in this section, “medical assistant” means any person who:

(a) Is employed by an osteopathic physician;

(b) Is under the direction and supervision of the osteopathic physician;

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

(d) Is not required to be certified or licensed by an administrative agency to provide that assistance.

Sec. 3. NAC chapter 633 is amended to add the following new language:

1. For the purposes of this regulation, “acute pain” is the normal, predictable physiological response to a noxious chemical, thermal, or mechanical stimulus typically associated with invasive procedures, trauma, or disease and limited in duration. For the purposes of this regulation, “acute pain” does not include:

(a) Pain occurring and being treated in an in-patient, acute-care facility;

(b) Pain resultant from active cancer and its treatment;

(c) Palliative care; or

(d) End-of-life care.

2. For the purposes of this regulation, “chronic pain” means pain that lasts more than 90 days or beyond the time of normal healing for the patient’s condition, whichever sooner occurs. For the purposes of this regulation, “chronic pain” does not include:

(a) Pain occurring and being treated in an in-patient, acute-care facility;

(b) Pain resultant from active cancer and its treatment;

(c) Palliative care; or

(d) End-of-life care.

3. For the purposes of this regulation, “end-of-life care” shall mean care for patients with a terminal illness or at high risk for dying in the near future in hospice care, hospitals, long-term care facilities, or at home.

4. For the purposes of this regulation and subsection (c) of section 1 of NRS 633.521, “intractable pain” shall mean pain that is not relieved by ordinary medical, surgical, and nursing measures, such as cancer pain, pain from a chronic or degenerative disease, or pain from an unidentified cause.

5. For the purposes of this regulation, “opioid” means any controlled substance that binds to an opioid receptor in the central nervous system, including both naturally occurring and synthetic or semi-synthetic opioid drugs or medications, as well as endogenous opioid peptides.

6. For the purposes of this regulation, “palliative care” means care that provides relief from pain and other symptoms, supports quality of life, and is focused on a patient’s advanced illness.

Sec. 4. NAC chapter 633 is amended to add the following new language:

1. An osteopathic physician or physician assistant shall prescribe, order, administer, or dispense opioids for pain only for a legitimate medical purpose based on accepted scientific knowledge of the treatment of pain or based on sound clinical grounds based upon a patient’s unique condition and circumstances.

2. An osteopathic physician or physician assistant treating a patient with acute pain must consider non-opioid treatments wherever and whenever possible in the professional judgment of the osteopathic physician or physician assistant. When, in the professional judgment of the osteopathic physician or physician assistant, an opioid is appropriate for the treatment of a patient’s acute pain, the osteopathic physician or physician assistant shall prescribe the opioid at the lowest effective dose and for no longer than the expected duration of the acute pain to minimize unintentional initiation of long-term opioid use. Absent a clinical reason documented by the osteopathic physician or physician assistant for the unique needs of a particular patient, long-acting or extended-release opioids are not to be used for the treatment of acute pain.

3. An osteopathic physician or physician assistant treating a patient with chronic or intractable pain shall perform and shall document in a patient’s medical record that the osteopathic physician or physician assistant has:

(a) Conducted a history, physical examination, and appropriate diagnostic testing based upon the subjective complaint from the patient and the patient’s medical history;

(b) Diagnosed the patient to have chronic or intractable pain;

(c) Developed a written treatment plan that includes:

(1) Information supporting the selection of therapies, both pharmacologic and nonpharmacologic;

(2) Specification of treatment goals that will be used to evaluate the treatment's progress or success, such as relief of pain and improved physical and psychosocial function;

(3) Documentation of the ordering, consideration, or analysis of diagnostic evaluations, consultations, referrals, or additional therapies that have been considered;

(4) A trial period of opioid therapy for no more than 90 days that includes:

(I) Specified evaluation points;

(II) Initiating opioid therapy at the lowest dose possible and titrating to effect;

(III) Periodic and regular monitoring for both benefit and harm in terms of the effects on the patient's level of pain, function, and quality of life;

(IV) Careful evaluation of the benefits versus the adverse events and potential risks for continuance of the opioid therapy beyond the trial period;

(5) Evidence of careful consideration of all of the information and treatment before determining whether to continue, discontinue, or modify opioid therapy after the initial trial period.

(d) Obtained the informed consent of the patient for opioids treatment, which shall be evidenced by a written document signed by the patient prior to the initiation of opioid therapy;

(e) Monitored and adapted, as appropriate, the treatment plan as a result of the assessment at each patient visit;

(f) Obtained and analyzed drug screens at such frequency as is warranted by the risk or evidence of aberrant behavior or as is set out in the treatment agreement;

(g) Obtained and analyzed a patient specific report from the Nevada Prescription Controlled Substances Abuse Prevention Task Force:

(1) For a period of at least one year prior to the commencement of treatment; and

(2) Occasionally throughout the period of treatment to assure that the patient is compliant with the treatment plan and that the patient is not engaged in aberrant, abusive, or diversionary activity;

(h) Referred or considered the referral of the patient to or has consulted or considered consulting with appropriate health care professionals such as pain medicine specialists, psychiatrists, psychologists, neurologists, addiction specialists, or others in furtherance of the treatment goals; and

(i) Terminated, modified, or placed additional conditions on continued treatment where there is evidence or reason to suspect that the patient is misusing, abusing, or diverting opioids prescribed by the osteopathic physician or physician assistant.