

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

LCB File No. R007-99

August 17, 1999

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

AUTHORITY: §§1-6, 9, 11, 12 and 13, NRS 630.130; §§7, 8, 10 and 14-20, NRS 630.130 and 630.275.

Section 1. Chapter 630 of NAC is hereby amended by adding thereto the provisions set forth as sections 2 to 11, inclusive, of this regulation.

Sec. 2. *“Acute pain” means the normal, predicted physiological response to an adverse chemical, thermal or mechanical stimulus and is associated with surgery, trauma or acute illness. Acute pain is generally limited in duration and is responsive to therapies such as the use of opioids.*

Sec. 3. *“Chronic pain” means pain which is persistent and the cause of which cannot be removed or otherwise treated. Chronic pain may be associated with a long-term incurable or intractable medical condition or disease.*

Sec. 4. *“Controlled substance” has the meaning ascribed to it in NRS 0.031.*

Sec. 5. *“Substance abuse” means the use of a controlled substance for a non-therapeutic purpose or the use of medication for a purpose other than that for which it was prescribed.*

Sec. 6. *As used in subparagraph (1) of paragraph (d) of subsection 2 of NRS 630.160, the term “graduate education” does not include training received in the program commonly referred to as the “fifth pathway program,” which was established by the American Medical*

Association in 1971 to allow entry into the first year of graduate medical education in the United States to citizens of the United States who study at foreign medical schools.

Sec. 7. *If a committee conducting an investigation pursuant to NRS 630.311 becomes aware that the physician or physician's assistant who is subject to the investigation has tested positive for exposure to the human immunodeficiency virus, the committee shall appoint a group of specialists on public health and infectious diseases who shall:*

1. Review all the circumstances of the practice of the physician or physician's assistant; and

2. Advise the committee, in accordance with the guidelines on "Health Care Workers Infected with HIV" established by the Center for Disease Control and Prevention, on the action, if any, the committee should take concerning the physician or physician's assistant.

Sec. 8. *1. A physician and a physician's assistant shall control any acute or chronic pain of a patient for the duration of the pain by prescribing controlled substances in accordance with the prevailing standards of acceptable practice of medicine as described in subsection 2.*

2. To comply with the prevailing standards of acceptable practice of medicine the physician or physician's assistant shall:

(a) Before prescribing the controlled substance:

(1) Conduct an evaluation and assessment of the patient that includes, without limitation:

(I) A physical examination;

(II) Investigation and documentation of the medical history of the patient; and

(III) Investigation of whether the patient has a history of substance abuse;

(2) Establish a plan for treating the patient that includes, without limitation:

(I) Objectives that will be used to determine the success of the treatment, including, without limitation, the objectives of pain relief and improved physical and psychosocial function; and

(II) A list and timetable for diagnostic evaluations and other treatments that are planned for the patient;

(3) Discuss the risks and benefits of using the controlled substance with the patient, with the legal guardian or surrogate of the patient or with any other person at the patient's request;

(4) After discussing the risks and benefits pursuant to subparagraph (3), receive written consent from the patient or the legal guardian or surrogate of the patient to use the controlled substance;

(5) If the patient is a high risk for substance abuse, enter into an agreement with the patient pursuant to section 10 of this regulation; and

(6) Document the requirements of subparagraphs (1) to (5), inclusive, in medical records of the patient that comply with the requirements of section 9 of this regulation.

(b) After prescribing the controlled substance:

(1) Review the progress of the patient towards the goals outlined in the plan for treatment and any new information about the etiology of the pain at periodic intervals based upon the individual circumstances of the patient;

(2) Refer the patient, as necessary, for additional evaluation and treatment in order to achieve the objectives of the plan for treatment;

(3) Monitor the patient's compliance with instructions relating to use of the controlled substance and the plan for treatment;

(4) Adjust the medication therapy, as necessary, to meet the individual needs of the patient;

(5) Discontinue treatment when the physician or physician's assistant determines that the treatment is not effective; and

(6) Maintain medical records for the patient that comply with the requirements of section 9 of this regulation.

Sec. 9. 1. *The medical records for a patient to whom a controlled substance has been prescribed to treat acute or chronic pain must be accurate, complete and current and must be kept at the physician's office in a place that is easily accessible.*

2. *Medical records for a patient to whom a controlled substance has been prescribed to treat acute or chronic pain must include, without limitation:*

(a) The medical history and physical examination of the patient, including, without limitation:

(1) The nature and intensity of the pain;

(2) Current and past treatments that the patient has received for the pain;

(3) Diseases and other medical conditions that the patient has that may cause or contribute to the pain;

(4) The effect of the pain upon the physical and psychological functioning of the patient;

(5) Any history of substance abuse; and

(6) At least one recognized medical indication for the use of a controlled substance;

(b) Notable assessments of the patient, as applicable, including, without limitation:

(1) Whether the patient is a high risk for substance abuse;

(2) Tolerance;

(3) Analgesic tolerance;

(4) Physical dependence;

(5) Addiction; or

(6) Pseudo addiction;

(c) Diagnostic, therapeutic and laboratory results;

(d) Notes from each evaluation and consultation with the patient;

(e) Treatment objectives;

(f) Discussion of risks and benefits;

(g) Suggested, prescribed and proposed treatments;

(h) Date, type, dosage and quantity of medications prescribed;

(i) Instructions and agreements; and

(j) Notes from periodic reviews.

3. As used in this section:

(a) “Addiction” means a neurobehavioral syndrome with genetic and environmental influences that result in psychological dependence on the use of medications for their psychic effects and is characterized by compulsive use despite harm. The term does not include physiological dependence, analgesic tolerance and tolerance.

(b) “Analgesic tolerance” means the need to increase the dose of an opioid to achieve the same level of analgesia.

(c) “Physical dependence” means a physiological state of neuroadaptation which is an expected result of the use of opioids and is characterized by the emergence of a withdrawal syndrome if medication use is stopped or decreased abruptly, or if an antagonist is administered.

(d) “Pseudo addiction” means a pattern of behavior, which can be mistaken for addiction, in which a patient who is receiving inadequate treatment for pain seeks additional medication to alleviate the pain.

(e) “Tolerance” means a physiological 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 dosage.

Sec. 10. *Before prescribing a controlled substance to a patient for the treatment of acute or chronic pain, a physician or physician's assistant shall determine whether the patient is a high risk for substance abuse. A physician or physician's assistant shall determine a patient who has a history of substance abuse to be a high risk for substance abuse. If the physician or physician's assistant determines that a patient is a high risk for substance abuse, he shall, before prescribing the controlled substance, enter into a written agreement with the patient which outlines the patient's responsibilities with respect to the controlled substance and which must include, without limitation:*

1. An agreement by the patient to submit, upon request of the physician or physician's assistant, to testing of the patient's blood or urine to determine the level of controlled substance being used by the patient;

2. The number and frequency of refills of the prescription; and

3. The reasons that the prescription for the controlled substance may be discontinued, including, without limitation, a violation of the terms of the agreement.

Sec. 11. *Except as otherwise provided in NAC 630.440 and 630.450, a request for the board to consider or take action upon a matter at a meeting must be received by the board at least 15 business days before the date of the meeting.*

Sec. 12. NAC 630.010 is hereby amended to read as follows:

630.010 As used in this chapter, unless the context otherwise requires ~~the~~
~~—1.—The] the~~ words and terms defined in NRS 630.010 to 630.025, inclusive, *and sections 2 to 5, inclusive, of this regulation*, have the meanings ascribed to them in those sections. ~~.] and~~
~~—2.—“Controlled substance” has the meaning ascribed to it in NRS 0.031.]~~

Sec. 13. 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 *primary* certification by a specialty board ~~[or subspecialty board]~~ of the American Board of Medical Specialties and received *primary* certification from that board; *or*

~~(6) [The examination for recertification by the 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 use the weighted average score of 75 as determined by the Federation of State Medical Boards of the United States, Inc. 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 before taking Step III of the United States Medical Licensing Examination, and is entitled to an unlimited number of attempts to pass and an unlimited amount of time to complete Steps I, II and III of the United States Medical Licensing Examination.*

5. *A graduate of a foreign medical school who is an applicant 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 before taking the United States Medical Licensing Examination.

6. An applicant for a license to practice medicine and a person who holds a license to practice medicine shall pay the board for the reasonable costs of any examination required for licensure and any examination ordered pursuant to NRS 630.318.

Sec. 14. 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. *A license issued to an alien after March 15, 1999, must state in a conspicuous manner:*

“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 remain and work in the United States lawfully .”

Sec. 15. NAC 630.230 is hereby amended to read as follows:

630.230 1. A *person who is licensed as a physician or physician's assistant* 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 *or physician's assistant* is under the influence of alcohol or any controlled substance or is in any 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 *or physician's assistant* 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 ~~[(j)]~~ *or physician's assistant*, 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 ~~[(j)]~~ *or*

~~—(m) Fail~~ *or physician's assistant*;

(k) If the person is a physician, fail to provide adequate supervision of a physician's assistant or an advanced practitioner of nursing [REDACTED];

(l) Fail to honor the advance directive of a patient without informing the patient or the surrogate or guardian of the patient, and without documenting in the patient's records the reasons for failing to honor the advance directive of the patient contained therein;

(m) Fail to adequately prescribe controlled substances for the control of pain in accordance with prevailing standards of acceptable practice of medicine as described in section 8 of this regulation; or

(n) Engage in the practice of writing prescriptions for controlled substances to treat acute or chronic pain in a manner that deviates from the prevailing standards of acceptable practice of medicine as described in section 8 of this regulation.

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 [REDACTED] *or physician's assistant;*

- (2) Is under the direction and supervision of the physician ~~[;]~~ *or physician's assistant;*
- (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. 16. 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]~~ :

- 1. Will be served by* personal service or by certified mail upon ~~[~~
 - ~~1. The]~~ *the* person affected by them at the address of the person on file with the board ~~[; and~~
 - ~~2. His]~~ *and his* attorney of record ~~[;]~~ ;
- 2. Will be delivered by first class mail to each hospital in the geographical area in which the physician or physician's assistant practices; and*
- 3. May be delivered by first class mail to members of the media.*

Sec. 17. NAC 630.290 is hereby amended to read as follows:

630.290 1. An application for licensure as a physician's assistant must be made on a form supplied by the board. The application must state:

- (a) The date and place of the applicant's birth, his sex, the various places of his residence from the date of graduation from high school and at least two references from persons who have knowledge of the applicant's training or experience;
- (b) The applicant's education, including, without limitation, high schools and postsecondary institutions attended, the length of time in attendance at each and whether he is a graduate of those schools and institutions;
- (c) Whether the applicant has ever applied for a license or certificate as a physician's assistant in another state and, if so, when and where and the results of his application;

(d) The applicant's practical training and experience;

(e) Whether the applicant has ever been investigated for misconduct as a physician's assistant or had a license or certificate as a physician's assistant revoked, modified, limited or suspended or whether any disciplinary action or proceedings have ever been instituted against him by a licensing body in any jurisdiction;

(f) Whether the applicant has ever been convicted of a felony or an offense involving moral turpitude; and

(g) Whether the applicant has ever been investigated for, charged with or convicted of the use or illegal sale or dispensing of controlled substances.

2. The application must also include:

(a) The name and address of the practice of each supervising physician and the type of practice of the applicant;

(b) The address of each location where the applicant will practice;

(c) A description of the medical services to be performed by the physician's assistant, including, but not limited to, those medical services to be performed in the supervising physician's office, in a hospital and in other settings; and

(d) A list of any poisons, controlled substances, dangerous drugs or devices which the supervising physician prohibits the physician's assistant to prescribe, possess, administer or dispense in or out of the presence of the supervising physician.

3. An applicant must submit to the board:

(a) Proof of completion of a training program as a physician's assistant which is approved by the Committee on Allied Health Education and Accreditation or the Commission on

Accreditation of Allied Health Education Programs, both of which are affiliated with the American Medical Association;

(b) Proof of passage of the examination given by the National Commission on Certification of Physicians' Assistants; and

(c) Such further evidence and other documents or proof of qualifications as required by the board.

4. Each application must be signed by the applicant and sworn to before a notary public or other officer authorized to administer oaths.

5. The application must be accompanied by the applicable fee.

6. An applicant for licensure as a physician's assistant shall pay the board for the reasonable costs of any examination required for licensure.

Sec. 18. 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 Physicians' Assistants ~~(H)~~;

(m) Is guilty of violating a provision of NAC 630.230; or

(n) Is guilty of violating a provision of NRS 630.301 to 630.3065, inclusive.

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 II, III, IV or V 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 section 8 of this regulation.

Sec. 19. NAC 630.395 is hereby amended to read as follows:

630.395 If there is reason to believe that the conduct of any licensed physician's assistant has raised a reasonable question as to his competence to practice with reasonable skill and safety to patients, an examination testing the medical competence of the physician's assistant may be ordered by the board or the investigative committee of the board to determine his fitness to practice. *A physician's assistant who is subject to an examination pursuant to this section shall pay to the board the cost of the examination.*

Sec. 20. NAC 630.400 is hereby amended to read as follows:

630.400 1. If the board or any investigative committee of the board has reason to believe that the conduct of any physician's assistant has raised a reasonable question as to his competence to practice as a physician's assistant with reasonable skill and safety to patients, it may order that the physician's assistant undergo a mental or physical examination or an examination testing his competence to practice as a physician's assistant by physicians or any other examination designated by the board to assist the board or committee in determining the fitness of the physician's assistant to practice as a physician's assistant.

2. Every physician's assistant who applies for or is issued a license and who accepts the privilege of performing medical services in this state shall be deemed to have given his consent

to submit to such an examination pursuant to subsection 1 when he is directed to do so in writing by the board.

3. For the purpose of this section, the report of testimony or examination by the examining physicians does not constitute a privileged communication.

4. Except in extraordinary circumstances, as determined by the board, the failure of a licensed physician's assistant to submit to an examination when he is directed to do so pursuant to this section constitutes an admission of the charges against him. A default and final order may be entered without the taking of testimony or presentation of evidence.

5. A physician's assistant who is subject to an examination pursuant to this section shall pay to the board the costs of the examination.