

LCB File No. R089-00

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

**NOTICE OF INTENT TO ACT UPON
PROPOSED REGULATIONS
OF THE NEVADA STATE BOARD OF MEDICAL EXAMINERS**

The Nevada State Board of Medical Examiners will hold a public hearing at 4:30 p.m., Thursday, May 4, 2000, or as soon thereafter as it may be heard on that date, by telephone conference call to be conducted from the offices of the Board at 1105 Terminal Way, Suite 300, Reno, Nevada.

The purpose of the hearing is to receive comments from all interested persons regarding the adoption, amendment, or repeal of regulations pertaining to Chapter 630 of the Nevada Administrative Code.

The following information is provided pursuant to the requirements of NRS 233B.060:

The proposed revocation of NAC 630.015, 630.020, 630.030, 630.193, 630.195, and 630.197, are the result of hearings held by the Board on petitions to revoke the new regulations on "pain control" and adopt the Federation of State Medical Boards of the United States, Inc., Model Guidelines for the Use of Controlled Substances for the Treatment of Pain.

The proposed of revocation of the language of paragraph (m) of NAC 630.230, is the result of hearings held by the Board on petitions to revoke the new regulations on "pain control" and adopt the Federation of State Medical Boards of the United States, Inc., Model Guidelines for the Use of Controlled Substances for the Treatment of Pain.

The proposed amendment to the language of paragraph (m) of NAC 630.230, incorporates part of the language of deleted paragraph (n) and adds language thereto adoption by reference, the Federation of State Medical Boards of the United States, Inc., Model Guidelines for the Use of Controlled Substances for the Treatment of Pain.

The proposed changes to Chapter 630 of the Nevada Administrative Code, are set out hereinafter and are proposed to read as follows this notice

The adoption, amendment, and repeal of these regulations will create no adverse or beneficial economic effect on the public or upon physicians and physician's assistants regulated.

There are no immediate or long-term economic effects of the adoption, amendment, and

repeal of these regulations anticipated with respect to the public, physicians, or physician's assistants.

The Nevada State Board of Medical Examiners will have no additional costs incurred to administer the regulations adopted, amended or repealed. Enforcement of the regulations can be accomplished through present resources at no additional cost to the Board. In the event any unknown or unanticipated cost does occur, the cost would be assumed by the Nevada State Board of Medical Examiners from its fees charged physicians and physician's assistants, as the Board receives no appropriated funds from the state of Nevada.

The proposed adoption, amendment, or repeal of these regulations do not overlap or duplicate any regulations of other state or local agencies, nor do they overlap or duplicate a federal regulation, nor are they required pursuant to federal law.

The proposed adoption, amendment, or repeal of these regulations do not establish any new fee(s).

Persons wishing to comment on the proposed adoption, amendment, or repeal of these regulations may appear at the scheduled public hearing or may address their comments, data, views or arguments, in written form, to the Nevada State Board of Medical Examiners, 1105 Terminal Way, Suite 301, P. O. Box 7238, Reno, Nevada 89510. Written submissions must be received by the Board on or before five (5) days prior to the date set for the hearing. If no person directly affected by the proposed action appears to request time to make an oral presentation, the Nevada State Board of Medical Examiners may proceed immediately to act upon any written submissions.

A copy of this notice and the proposed adoption, amendment, or repeal of these regulations 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 regulations to be adopted, amended, or repealed will be available at the offices of the Nevada State Board of Medical Examiners, 1105 Terminal Way, Suite 301, Reno, Nevada, and in all counties in which an office of the Board 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 regulations 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 will also be mailed to members of the public upon request. A reasonable fee may be charged for copies if it is deemed necessary.

Upon adoption of any regulation, the agency, if requested to do so by an interested person, either before adoption or within 30 days thereafter, will issue a concise statement of the principal reasons for and against its adoption, and incorporate therein its reason for overruling the consideration urged against its adoption.

This notice of hearing has been 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

DATED: This ____ day of March, 2000.

NEVADA STATE BOARD OF MEDICAL EXAMINERS

ARNE D. ROSENCRANTZ,
President

PROPOSED REGULATION OF THE BOARD OF MEDICAL EXAMINERS

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

AUTHORITY: NRS 630.130, NRS 233B.040(3).

Chapter 630 of NAC is hereby amended by deleting NAC 630.015, 630.020, 630.030, 630.193, 630.195, and 630.197, and amending NAC 630.010 and 630.230.

NAC 630.010 Definitions. (NRS 630.130) As used in this chapter, unless the context otherwise requires, the words and terms defined in NRS 630.010 to 630.025, inclusive, and NAC ~~[630.015 to 630.030, inclusive]~~ **630.025** have the meanings ascribed to them in those sections

~~[NAC 630.015 “Acute pain” defined. (NRS 630.130) “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.~~

~~NAC 630.020 “Chronic pain” defined. (NRS 630.130) “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.~~

~~NAC 630.030 “Substance abuse” defined. (NRS 630.130) “Substance abuse” means the use of a controlled substance for a nontherapeutic purpose or the use of medication for a purpose other than that for which it was prescribed.~~

~~[NAC 630.193 Controlled substances for acute or chronic pain: Procedure for prescribing. (NRS 630.130, 630.275)~~

~~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 assessment and evaluation 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;~~

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

~~(III) An agreement between the physician or physician's assistant and the patient that the patient will obtain his prescription for the controlled substance only from that physician or physician's assistant and fill or refill the prescription at only one specified pharmacy;~~

~~(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 NAC 630.195; and~~

~~(6) Document the requirements of subparagraphs (1) to (5), inclusive, in medical records of the patient that comply with the requirements of NAC 630.197.~~

~~(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 on the individual circumstances of the patient;~~

~~(2) Refer the patient, as necessary, for additional evaluation and treatment 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 if 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 NAC 630.197.~~

~~NAC 630.195 Controlled substances for acute or chronic pain: Determination of patient as high risk for substance abuse; agreement outlining patient responsibilities if patient determined high risk. (NRS 630.130, 630.275)~~

~~1. 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. In making such a determination, a physician or physician's assistant shall consider such factors as are medically reasonable. Regardless of the absence of other factors, a patient who has a history of substance abuse must be determined to be a high risk for substance abuse.~~

~~2. If a 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:

- (a) 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;
- (b) The number and frequency of refills of the prescription; and
- (c) The reasons that the prescription for the controlled substance may be discontinued, including, without limitation, a violation of the terms of the agreement.

~~NAC 630.197 Controlled substances for acute or chronic pain: Requirements for maintenance and contents of records of patients. (NRS 630.130)~~

~~1. A physician and physician's assistant shall maintain or cause to be maintained in an accurate, complete and current manner the medical records of each patient to whom he has prescribed a controlled substance to treat acute or chronic pain. Such records must be kept at the office in which the physician or physician's assistant practices and 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 assessment, 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.]~~

NAC 630.230 Prohibited professional conduct. (NRS 630.130, 630.275)

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) 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;

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

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

(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;

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

(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;

(i) Allow any person to act as a medical assistant in the treatment of a patient of the physician or physician's assistant, unless the medical assistant has sufficient training to provide the assistance;

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

(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; *or*,

(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 NAC 630.193; 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 *Model Guidelines for the Use of Controlled Substances for the Treatment of Pain, published by the Federation of State Medical Boards of the United States, Inc., which the board hereby adopts by reference. A copy of the publication may be obtained from the Federation of State Medical Boards of the United States, Inc., Federation Place, 400 Fuller Wiser Road, Suite 300, Euless, Texas 76039-3855, for free.* ~~[prevailing standards of acceptable practice of medicine as described in NAC 630.193.]~~

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 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.