

**PROPOSED REGULATION OF THE
STATE BOARD OF PHARMACY**

LCB File No. R010-01

July 13, 2001

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

AUTHORITY: §§1-6, NRS 639.070.

Section 1. Chapter 639 of NAC is hereby amended by adding thereto the provisions set forth as sections 2 and 3 of this regulation.

Sec. 2. 1. *If a license to conduct a pharmacy is issued for an applicant that is required to designate a natural person as a representative of the pharmacy pursuant to NAC 639.5005, the license is subject to the following restrictions:*

(a) The license expires 90 days after the date the license is issued by the board.

(b) The license entitles the pharmacy to purchase prescription drugs only to the extent necessary to fill prescriptions actually received by the pharmacy.

(c) The license prohibits the pharmacy from selling, transferring, distributing, dispensing or otherwise providing prescription drugs to anyone except to a patient who has a legal prescription.

2. A pharmacy subject to the provisions of this section may receive an unrestricted license after the pharmacy provides the board with a copy of a fully executed contract with a long-term care facility, home care facility or other similar facility in which the pharmacy has contracted to be the primary provider of prescription drugs. The net proceeds for the

pharmacy from such a contract must be at least 75 percent of the monthly payroll for the employees employed by or otherwise compensated by the pharmacy.

3. Before the board issues an unrestricted license pursuant to this section, the board will inspect the pharmacy and the records of the pharmacy to confirm that the pharmacy has complied with the requirements of this section and all other applicable laws.

4. If a restricted license expires, whether or not after the original period of 90 days or after any subsequent extension, because the pharmacy has not been able to comply with the requirements of this section:

(a) The board will not issue an unrestricted license to the pharmacy; and

(b) The pharmacy is subject to involuntary closure pursuant to the provisions of NAC 639.570.

5. The owner of a pharmacy that has been involuntarily closed pursuant to subsection 4 and NAC 639.570 may not reapply for a pharmacy license sooner than 1 year after the date of the expiration of the restricted license.

6. A pharmacy that has been issued a restricted license pursuant to this section may apply for one extension of the license, which may not exceed 90 days. To apply for an extension of a restricted license, the pharmacy must:

(a) Apply in writing not later than 60 days after the date when the restricted license was issued on a form provided by the board;

(b) Be in compliance with this section and all applicable laws; and

(c) Demonstrate that it has made a good faith effort to obtain a contract to provide pharmacy services.

Sec. 3. 1. *A pharmacy which purchases drugs and which is required pursuant to NAC 639.5005 to designate a natural person as a representative of the pharmacy shall have the drugs shipped to the pharmacy and shall physically receive the drugs at the physical address for which the board has issued the license of the pharmacy.*

2. The drugs purchased by a pharmacy must not be drop-shipped to any address other than the physical address of the pharmacy to which the board has issued the license of the pharmacy. As used in this subsection, “drop-shipped” means a direct shipment of drugs to the patient from the manufacturer or wholesaler of the drugs.

3. A pharmacist employed by a pharmacy shall acknowledge on every invoice that the drugs listed in the invoice were physically received by the pharmacy at the physical address to which the board has issued the license of the pharmacy.

Sec. 4. NAC 639.5005 is hereby amended to read as follows:

639.5005 1. Except as otherwise provided in this subsection, an applicant for *a license, or a licensee with* a license , to conduct a pharmacy shall designate at least one natural person who will be the representative of the pharmacy. The board will not issue a license to an applicant *or renew the license of a licensee* that is required to designate a representative of a pharmacy pursuant to this section unless the board determines that the designated natural person meets the qualifications set forth in subsection 2 and approves that natural person to be the designated representative of the pharmacy. The requirement to designate a representative set forth in this subsection does not apply to:

(a) An applicant *or a licensee* that is a publicly traded corporation; ~~{or}~~

(b) *An applicant or licensee whose pharmacy is determined by the board to be located within a large retail store, including, without limitation, a grocery store, variety store or department store under common ownership; or*

(c) An applicant *or licensee* in which a majority interest of the applicant *or licensee* is owned by a pharmacist who is:

- (1) Licensed by the board; and
- (2) A resident of this state.

2. Except as otherwise provided in subsection 3, the board will approve a natural person to be a representative of a pharmacy if the applicant for a license to conduct a pharmacy or the licensee presents proof satisfactory to the board that the natural person:

(a) Has been employed for at least 6,000 hours in a pharmacy or with a wholesaler in a capacity related to the dispensing and distribution of, and recordkeeping relating to, prescription drugs;

(b) Has received a score of at least 75 percent on an examination given by the board regarding federal and state laws and pharmacy practices; and

(c) Is at least 21 years of age.

3. The board may, based upon any of the grounds set forth in NRS 639.210, refuse to approve a natural person for service as the representative of a pharmacy, regardless of whether the person is otherwise qualified.

4. A representative of a pharmacy designated pursuant to this section:

(a) Must be actively involved in and aware of the actual daily operation of the pharmacy;

(b) Must be employed full time in a managerial level position in the pharmacy;

(c) Must be physically present at the site of the pharmacy during regular business hours, except when the absence of the representative is authorized, including sick leaves, vacation leaves and other authorized absences; and

(d) May serve in this representative capacity for only one pharmacy at a time.

5. A pharmacy that is required to designate a natural person as its representative pursuant to this section shall not open or operate the pharmacy unless that representative is actually employed full time in the operation of the pharmacy and is physically present at the site of the pharmacy during regular working hours, not including sick leave, vacation leave and other authorized absences from work. If the natural person designated as the representative of a pharmacy leaves the employ of the pharmacy, thus leaving the pharmacy without a representative in violation of this section, the pharmacy shall:

(a) Immediately cease conducting business until another qualified natural person is approved by the board to serve as the representative of the pharmacy; and

(b) Not later than 48 hours after that person leaves its employ, notify the board that the person designated as the representative of the pharmacy has left the employ of the pharmacy.

6. Before a pharmacy that is in violation of this section because the natural person designated as the representative of the pharmacy left the employ of the pharmacy may continue conducting business:

(a) The pharmacy must designate, on a form provided by the board, a new natural person to serve as the representative of the pharmacy; and

(b) The board must approve the natural person so designated.

7. A pharmacy that operates without a representative in violation of this section is subject to the immediate suspension of its license until it employs a qualified natural person to be its

representative. The board will consider such a suspension to be an involuntary closure subject to the provisions of NAC 639.570, entitling the staff of the board to close the pharmacy until it designates and employs a qualified natural person as its representative.

Sec. 5. 1. Any pharmacy required to designate a natural person as a representative of the pharmacy pursuant to NAC 639.5005 that was licensed before the effective date of this section shall, not later than October 31, 2001, provide the board with a copy of a fully executed contract with a long-term care facility, home care facility or other similar facility for which the pharmacy has contracted to be the primary provider of prescription drugs. The net proceeds for the pharmacy from the contract must equal at least 90 percent of the monthly payroll for the employees employed by the pharmacy or persons otherwise compensated by the pharmacy.

2. The license of a pharmacy that does not provide a copy of the contract required pursuant to subsection 1 shall be deemed to be expired on November 1, 2001. A pharmacy whose license has expired pursuant to this subsection must be involuntarily closed pursuant to NAC 639.570.

Sec. 6. A pharmacy licensed before September 5, 2000, shall submit an application not later than October 31, 2001, on a form provided by the board, for the approval of a qualified natural person pursuant to NAC 639.5005. On and after November 1, 2001, any pharmacy that operates without a qualified natural person is subject to the provisions of subsection 7 of NAC 639.5005.