

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

LCB File No. R154-09

November 13, 2009

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

AUTHORITY: §§1, 6-10, 12, 20, 22-27, 29 and 30, NRS 633.291; §§2, 3 and 15-19, NRS 633.291 and section 4 of Senate Bill No. 266, chapter 265, Statutes of Nevada 2009, at page 1107; §4, NRS 633.291 and 633.315; §§5 and 11, NRS 633.291 and 633.415; §§13 and 14, NRS 633.291 and 633.434; §21, NRS 633.241 and 633.291; §28, NRS 633.291 and 633.571.

A REGULATION relating to osteopathic medicine; defining certain terms; establishing requirements for the issuance of certain special licenses, including the issuance of a special event license; providing additional conduct which is considered unethical conduct for a licensee; and providing other matters properly relating thereto.

Section 1. Chapter 633 of NAC is hereby amended by adding thereto the provisions set forth as sections 2 to 19, inclusive, of this regulation.

Sec. 2. *“Special event” has the meaning ascribed to it in section 4 of Senate Bill No. 266, chapter 265, Statutes of Nevada 2009, at page 1107.*

Sec. 3. *“Sponsoring osteopathic physician” means an osteopathic physician who sponsors a holder of a special event license issued pursuant to section 4 of Senate Bill No. 266, chapter 265, Statutes of Nevada 2009, at page 1107.*

Sec. 4. *For the purposes of NRS 633.315, “gross medical negligence”:*

1. Means the intentional failure to perform a duty in reckless disregard of the consequences as affecting the life of another person;

2. Has the meaning ascribed to it by the jurisdiction in which the license was revoked; or

3. Has the meaning ascribed to a term which the Board determines to be substantially similar to “gross medical negligence” by the jurisdiction in which the license was revoked.

Sec. 5. For the purposes of NRS 633.415, “notify” means the medical research facility or school of osteopathic medicine where a special licensee who is issued a special license pursuant to NRS 633.415 is employed notifies the Board within 30 days after the person ceases to teach, research or practice clinical osteopathic medicine in this State at the medical research facility or school of osteopathic medicine.

Sec. 6. For the purposes of section 66.5 of Senate Bill No. 269, chapter 494, Statutes of Nevada 2009, at page 2977, “notify” means the Division of Mental Health and Developmental Services of the Department of Health and Human Services notifies the Board within 30 days after a person who holds an authorized facility license issued pursuant to section 66.5 of Senate Bill No. 269, chapter 494, Statutes of Nevada 2009, at page 2977, ceases to practice osteopathic medicine in this State as a psychiatrist in a mental health center of the Division.

Sec. 7. For the purposes of section 66.7 of Senate Bill No. 269, chapter 494, Statutes of Nevada 2009, at page 2977, “notify” means the Department of Corrections shall notify the Board within 30 days after a person who holds an authorized facility license issued pursuant to section 66.7 of Senate Bill No. 269, chapter 494, Statutes of Nevada 2009, at page 2977, ceases to practice osteopathic medicine in this State in an institution of the Department of Corrections.

Sec. 8. For the purposes of subsection 13 of NRS 633.511, as amended by section 74 of Senate Bill No. 269, chapter 494, Statutes of Nevada 2009, at page 2983, “adequate notice” means that:

*1. Notice has been provided in writing to the patient at the patient's last known address;
and*

2. Except in exigent circumstances, such notice has been provided to the patient at least 30 days before the medical care of the patient is terminated.

Sec. 9. For the purposes of NRS 633.526 and 633.527, "report to the Board" means to report, in writing, to the Board.

Sec. 10. For the purposes of NRS 633.526 and 633.527, "other disposition" includes, without limitation, dismissal of a case by a court of law or as a result of mediation or arbitration.

Sec. 11. 1. The Board may issue a special license to any person designated in subsection 1 of NRS 633.415 who applies for a special license and includes with his application:

(a) An updated curriculum vitae evidencing his recognition as an expert in osteopathic medicine;

(b) A complete set of fingerprints and written permission authorizing the Board to forward the fingerprints to the Central Repository for Nevada Records of Criminal History for submission to the Federal Bureau of Investigation for its report; and

(c) The amount of the fees charged by any local agencies of law enforcement, the Central Repository for Nevada Records of Criminal History and the Federal Bureau of Investigation for the handling of the fingerprints and issuance of the reports of criminal histories.

2. A special licensee who is issued a special license pursuant to NRS 633.415 shall not employ or supervise a physician assistant.

Sec. 12. 1. *An osteopathic physician who is issued a special volunteer license to practice osteopathic medicine pursuant to section 66.3 of Senate Bill No. 269, chapter 494, Statutes of Nevada 2009, at page 2976, may render medical services pursuant to that license only in a medical facility, facility for the dependent or a physician's office.*

2. As used in this section:

(a) "Facility for the dependent" has the meaning ascribed to it in NRS 449.0045.

(b) "Medical facility" has the meaning ascribed to it in NRS 449.0151.

Sec. 13. 1. *A person who holds an authorized facility license issued pursuant to section 66.5 of Senate Bill No. 269, chapter 494, Statutes of Nevada 2009, at page 2977, may employ a physician assistant if the holder of the authorized facility license and the physician assistant otherwise satisfy the requirements of this chapter and chapter 633 of NRS concerning physician assistants and supervising osteopathic physicians.*

2. A person who holds an authorized facility license described in subsection 1 must, if the person wishes to renew the authorized facility license, annually submit proof of employment as a psychiatrist only in a mental health center of the Division.

3. As used in this section:

(a) "Division" means the Division of Mental Health and Developmental Services of the Department of Health and Human Services.

(b) "Mental health center" has the meaning ascribed to it in NRS 433.144.

Sec. 14. 1. *A person who holds an authorized facility license issued pursuant to section 66.7 of Senate Bill No. 269, chapter 494, Statutes of Nevada 2009, at page 2977, may employ a physician assistant if the holder of the authorized facility license and the physician assistant*

otherwise satisfy the requirements of this chapter and chapter 633 of NRS concerning physician assistants and supervising osteopathic physicians.

2. A person who holds an authorized facility license described in subsection 1 must, if the person wishes to renew the authorized facility license, annually submit proof of employment as an osteopathic physician only in an institution of the Department of Corrections.

Sec. 15. *In addition to satisfying the requirements set forth in section 4 of Senate Bill No. 266, chapter 265, Statutes of Nevada 2009, at page 1107, an applicant for a special event license issued pursuant to that section must:*

- 1. Be 21 years of age or older;*
- 2. Be a graduate of an accredited school of osteopathic medicine;*
- 3. Be sponsored by an osteopathic physician who is licensed and actively practicing osteopathic medicine in this State; and*
- 4. Not later than 60 days before the first special event for which the license is sought, submit to the Board:*

(a) The special event license fee prescribed in NRS 633.501, as amended by section 6 of Senate Bill No. 266, chapter 265, Statutes of Nevada 2009, at page 1108; and

(b) All information required to complete an application for a special event license.

Sec. 16. *In addition to appearing before the Board for a personal interview pursuant to NAC 633.210, an applicant for a special event license pursuant to section 4 of Senate Bill No. 266, chapter 265, Statutes of Nevada 2009, at page 1107, must appear before the Board with the sponsoring osteopathic physician for a discussion of the type of medical techniques and procedures that will be demonstrated at the special event.*

Sec. 17. *A special event license issued pursuant to section 4 of Senate Bill No. 266, chapter 265, Statutes of Nevada 2009, at page 1107, is valid for a period of 6 months after the date on which the license was issued.*

Sec. 18. *A holder of a special event license issued pursuant to section 4 of Senate Bill No. 266, chapter 265, Statutes of Nevada 2009, at page 1107, may not receive any fee or compensation, directly or indirectly, or expect any payment of any fee or compensation from a person who is the recipient of the medical techniques or procedures demonstrated at a special event by the holder of the special event license.*

Sec. 19. *A sponsoring osteopathic physician:*

1. Is liable for all damages, including any injuries, resulting from any medical techniques or procedures demonstrated at a special event by the holder of the special event license whom he sponsors.

2. Shall maintain accurate and legible health care records concerning any medical techniques or procedures performed at a special event on a person by the holder of the special event license whom he sponsors for the period required for the retention of health care records of patients pursuant to NRS 629.051.

Sec. 20. NAC 633.005 is hereby amended to read as follows:

633.005 As used in this chapter, unless the context otherwise requires, the words and terms defined in NAC 633.020 to 633.050, inclusive, *and sections 2 and 3 of this regulation*, have the meanings ascribed to them in those sections.

Sec. 21. NAC 633.100 is hereby amended to read as follows:

633.100 1. Except as otherwise provided in subsection 2, the compensation of the members of the Board is ~~[\$80]~~ *\$150* for each day spent in the discharge of official duties. While

engaged in the business of the Board, each member and employee of the Board is entitled to receive the per diem allowance and travel expenses provided for state officers and employees generally.

2. The Board will, after notifying each of its members, reduce the amount of the compensation, per diem allowance and travel expenses authorized for payment to the members of the Board, if the financial resources of the Board warrant the reduction.

Sec. 22. NAC 633.130 is hereby amended to read as follows:

633.130 1. The Board will hold at least three meetings per year at a time and place to be determined by the Board.

2. The Executive Director shall give each member written notice of each meeting, containing an agenda of the meeting, not later than ~~10~~ 7 days before the meeting, and shall post and mail copies in the manner prescribed by chapter 241 of NRS. Any proper business may be conducted at a regular meeting if it is provided for in the published agenda.

3. The President may call and, at the request of a majority of the members, shall call a special meeting on ~~5~~ 3 days' written notice ~~[by certified mail to all other members]~~ at any place where or time when a regular meeting could have been convened. The President, in calling a special meeting, shall post and mail the notice containing an agenda pursuant to chapter 241 of NRS.

Sec. 23. NAC 633.160 is hereby amended to read as follows:

633.160 1. Each applicant for a license to practice osteopathic medicine must apply on forms prepared and furnished by the Board.

2. On or after January 1, 2003, each application must be accompanied by:

(a) A physician information profile prepared by the Federation Credentials Verification Service of the Federation of State Medical Boards of the United States; and

(b) An affidavit affirming that:

(1) The applicant is the person named in the application and accompanying material; and

(2) To the best knowledge or belief of the applicant, the application and all accompanying material is complete, correct and consistent, and was obtained without fraud, misrepresentation or mistake.

3. No application will be accepted unless it is accompanied by the appropriate fee prescribed in NRS 633.501. All fees are nonrefundable.

4. An application for a license to practice osteopathic medicine shall not be deemed complete until all supporting documents and information required to complete the application have been provided by the applicant to or otherwise obtained by the Board.

Sec. 24. NAC 633.260 is hereby amended to read as follows:

633.260 *1.* Each person who holds a license to practice osteopathic medicine in this State shall ~~file~~:

(a) *File* with the Board his proper and current mailing address ; and ~~report immediately to~~

(b) *Notify* the Board *in writing of* any change ~~of address, giving~~ *in his mailing address within 30 days after the change. The notification must provide* both his old and his new *mailing* address.

2. Each person who holds a license to practice osteopathic medicine in this State and who intends to close his osteopathic medical practice shall notify the Board in writing at least 30 days before closing the practice. The notice must specify the person who or facility that will

maintain the health care records of the person's patients for the period required by NRS 629.051.

Sec. 25. NAC 633.350 is hereby 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:

~~{1.}~~ **(a)** Engages in sexual misconduct with a patient;

~~{2.}~~ **(b)** Abandons a patient;

~~{3.}~~ **(c)** Willfully makes and files false reports, records or claims in the osteopathic physician's practice;

~~{4.}~~ **(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;

~~{5.}~~ **(e)** Fails to generate or create medical records relating to the diagnosis, treatment and care of a patient;

~~{6.}~~ **(f)** Prescribes a controlled substance in a manner or an amount that the Board determines is excessive;

~~{7.}~~ **(g)** Fails to comply with the terms of an agreement with a diversion program approved by the Board;

~~{8.}~~ **(h)** Fails to comply with an order of the Board; ~~{9.}~~

~~—9.~~

(i) Fails to comply with a remediation agreement approved by the Board pursuant to section 67 of Senate Bill No. 269, chapter 494, Statutes of Nevada 2009, at page 2978;

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

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

(l) Fails to obtain a special event license for the demonstration of medical techniques and procedures as required by section 4 of Senate Bill No. 266, chapter 265, Statutes of Nevada 2009, at page 1107;

(m) Allows any person to act as a medical assistant in the treatment of a patient of the osteopathic physician;

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

(o) Fails to comply with the provisions of NAC 633.260 in a timely manner; or

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

2. 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. 26. NAC 633.350 is hereby 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:

- (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;
- (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) ~~Fails to comply with a remediation agreement approved by the Board pursuant to section 67 of Senate Bill No. 269, chapter 494, Statutes of Nevada 2009, at page 2978;~~
- ~~(j)~~ Violates the provisions of NRS 633.505 concerning discrimination or retaliation against an employee;
- ~~(k)~~ (j) Violates the provisions of NRS 629.061 concerning making the health care records of a patient available for physical inspection and furnishing of a copy of the health care records;
- ~~(l)~~ (k) Fails to obtain a special event license for the demonstration of medical techniques and procedures as required by section 4 of Senate Bill No. 266, chapter 265, Statutes of Nevada 2009, at page 1107;

~~(m)~~ (l) Allows any person to act as a medical assistant in the treatment of a patient of the osteopathic physician;

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

~~(o)~~ (n) Fails to comply with the provisions of NAC 633.260 in a timely manner; or

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

2. 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. 27. NAC 633.450 is hereby amended to read as follows:

633.450 1. If a complaint has been filed against an osteopathic physician pursuant to NRS 633.531, the Board may order the summary suspension of the license of the osteopathic physician pending disciplinary proceedings.

2. The Board will issue such an order if it determines that:

(a) The osteopathic physician has violated a provision of this chapter or chapter 633 of NRS;

(b) The summary suspension of the license is necessary to prevent a further violation of this chapter or chapter 633 of NRS; and

(c) The public health, safety or general welfare imperatively requires the summary suspension of the license.

3. An order summarily suspending a license:

(a) Must:

(1) Comply with the applicable provisions of NRS 233B.127; and

(2) Set forth the grounds upon which the order is issued, including a statement of facts;

(b) Is effective upon service on the osteopathic physician of the order and complaint; and

(c) Remains in effect until the Board:

(1) Modifies or rescinds the order; or

(2) Issues its final order or decision on the underlying complaint.

4. A hearing on the complaint must be held within ~~60~~ 45 days after the effective date of the suspension.

Sec. 28. NAC 633.490 is hereby amended to read as follows:

633.490 1. If a person whose practice of osteopathic medicine has been limited, or whose license to practice osteopathic medicine has been suspended, ~~or~~ revoked ~~or~~ *placed on inactive status*, applies to the Board ~~pursuant~~ :

(a) *Pursuant to NRS 633.481 for the restoration of his revoked license;*

(b) *Pursuant to NRS 633.491 for the renewal of his license; or*

(c) *Pursuant to NRS 633.681 for the removal of the limitation or suspension or for the ~~restoration~~ reinstatement of his revoked license,*

↳ the Board may require the person to submit to an examination testing his competence to practice osteopathic medicine.

2. The Board will not remove a limitation or ~~restore~~ *suspension or reinstate* a *revoked* license unless:

(a) The applicant proves by clear and convincing evidence that the requirements for the removal of the limitation *or suspension* or for the ~~restoration~~ *reinstatement* of the *revoked* license have been met; and

(b) The applicant proves by evidence satisfactory to the Board that he:

(1) Has complied with all the terms and conditions set forth in ~~the~~ *any* final order of the Board limiting his practice or suspending or revoking his license; and

(2) Is capable of practicing osteopathic medicine in a safe manner.

Sec. 29. NAC 633.140 is hereby repealed.

Sec. 30. 1. This section and section 1 to 25, inclusive, 27, 28 and 29 of this regulation become effective on the date on which this regulation is filed by the Legislative Counsel with the Secretary of State.

2. Section 26 of this regulation becomes effective on July 1, 2011.

TEXT OF REPEALED SECTION

633.140 Communications. (NRS 633.291) Each communication to a member of the Board which relates to the affairs of the Board and a copy of the member's reply will immediately be placed in the records of the Board.