NOTICE OF INTENT TO ACT UPON A REGULATION

NEVADA STATE BOARD OF MEDICAL EXAMINERS

The Nevada State Board of Medical Examiners will hold a public meeting at 9:15 a.m., or as soon thereafter as it may be heard on June 11, 2010, at 1105 Terminal Way, Ste. 301, Reno, Nevada. The reason for this meeting is to receive comments from all interested persons regarding the adoption of a regulation that pertains to chapter 630 of the Nevada Administrative Code.

The following information is provided pursuant to the requirements of NRS 233B.0603:

1. The proposed amendment is necessary to clarify existing Board of Medical Examiners policy regarding the delegation of tasks to medical assistants.

2. A copy of this notice and the regulation to be adopted 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 Nevada State Board of Medical Examiners at 1105 Terminal Way, Ste. 301 Reno, Nevada 89502, 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.

3. The proposed amendment does not establish any new fees or increases to existing fees.

4. The proposed amendment will not have a direct economic effect on the business of the practice of medicine or the public.

5. Enforcement of the proposed amendment will not result in an increased cost to the Nevada State Board of Medical Examiners.

6. To the Board's knowledge, the proposed amendment does not overlap or duplicate the regulation of other state or local governmental agencies or any federal regulations.

Persons wishing to comment upon the proposed action of the Nevada State Board of Medical Examiners may appear at the scheduled public board meeting or may address their comments, data, views or arguments, in written form, to the Nevada State Board of Medical Examiners, P.O. Box 7238 Reno, Nevada 89510-7238. Written submissions must be received by the Nevada State Board of Medical Examiners on or before **June 4, 2010**. 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 Medical Examiners may proceed immediately to act upon any written submissions.

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 Courthouse	Reno, Nevada
Carson City Library	Carson City, Nevada
Clark County District Library	Las Vegas, Nevada
Churchill County Library	Fallon, Nevada
Douglas County Library	Minden, Nevada
Elko County Library	Elko, Nevada
Esmeralda County Library	Goldfield, Nevada
Humboldt County Library	Winnemucca, Nevada
Lander County Library	White Pine, Nevada
Lincoln County Library	Pioche, Nevada
Lyon County Library	Yerington, Nevada
Mineral County Library	Hawthorne, Nevada
Tonopah Public Library (Nye County)	Tonopah, Nevada
Pershing County Library	Lovelock, Nevada
Storey County Library	Virginia City, Nevada
White Pine County Library	Ely, Nevada
Washoe County Library	Reno, Nevada

REVISED PROPOSED REGULATION OF THE

BOARD OF MEDICAL EXAMINERS

LCB File No. R167-09

February 1, 2010

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

AUTHORITY: §§1-10, NRS 630.130 and 630.275.

A REGULATION relating to the delegation of certain tasks by physicians and physician assistants; authorizing the delegation of certain tasks to medical assistants; and providing other matters properly relating thereto.

Section 1. Chapter 630 of NAC is hereby amended by adding thereto the provisions set forth as sections 2 to 7, inclusive, of this regulation.

Sec. 2. ***As used in NAC 630.185 to 630.230, inclusive, and sections 2 to 7, inclusive, of this regulation, unless the context otherwise requires, the words and terms defined in sections 3 to 6, inclusive, of this regulation have the meanings ascribed to them in those sections.***

Sec. 3. ***"Delegating practitioner" means a person who is licensed as a physician or physician assistant and who delegates to a medical assistant the performance of a task pursuant to the provisions section 7 of this regulation.***

Sec. 4. ***"Medical assistant" means a person who is not required to be certified or licensed by an administrative agency to perform a task that has been delegated by a delegating practitioner.***

Sec. 5. ***"Proximate supervision" means the delegating practitioner who is treating a patient is able to be immediately available in person to exercise oversight while the medical assistant performs a task on the patient.***

Sec. 6. ***"Rural supervision" means the delegating practitioner who is treating a patient is able to be immediately available by telephone or other means of instant communication during the course of the performance of a task by a medical assistant on the patient.***

Sec. 7. ***1. A delegating practitioner may delegate to a medical assistant the performance of a task if:***

(a) The delegating practitioner knows that the medical assistant possesses the knowledge, skill and training to perform the task safely and properly; and

(b) The medical assistant is not required to be certified or licensed by an administrative agency to perform that task.

2. Except as otherwise provided in subsection 3, a delegating practitioner shall provide proximate supervision of a medical assistant during the performance of a task which involves an invasive procedure.

3. If a delegating practitioner determines that the needs of a patient who is being treated in a rural area require immediate attention to ensure the appropriate treatment of the patient, the delegating practitioner may provide rural supervision of a medical assistant during the performance of a task when the delegating practitioner is, at the time the task is performed, physically located a significant distance from the location where the task is being performed.

4. A delegating practitioner retains responsibility for the safety and manner of the performance of each task which has been delegated pursuant to this section. A delegating practitioner shall not:

(a) Delegate a task that is not within the authority, training, expertise or normal scope of practice of the delegating practitioner.

(b) Transfer to another physician or physician assistant the responsibility of supervising a medical assistant during the performance of a task unless that physician or physician assistant knowingly accepts such responsibility.

(c) Authorize or permit a medical assistant to delegate the performance of a task to another person.

(d) Delegate or otherwise allow a medical assistant to administer an anesthetic agent which renders a patient unconscious or semiconscious.

5. As used in this section, "rural area" means any area in this State other than that in Carson City or the City of Elko, Henderson, Reno, Sparks, Las Vegas or North Las Vegas.

Sec. 8. NAC 630.185 is hereby amended to read as follows:

630.185 NAC 630.185 to 630.230, inclusive, ***and sections 2 to 7, inclusive, of this regulation*** set forth the standards of practice established by the Board.

Sec. 9. NAC 630.230 is hereby amended to read as follows:

630.230 1. A person who is licensed as a physician or physician 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 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 assistant and performed outside his own office;

(g) 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;

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

(i) Fail to provide adequate supervision of a medical assistant who is employed or supervised by the physician or physician assistant ~~[.]~~ ***, including, without limitation, proximate supervision and rural supervision as required by section 7 of this regulation;***

(j) If the person is a physician, fail to provide adequate supervision of a physician assistant or an advanced practitioner of nursing;

(k) 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

(l) Engage in the practice of writing prescriptions for controlled substances to treat acute pain or chronic pain in a manner that deviates from the guidelines set forth in the *Model Guidelines for the Use of Controlled Substances for the Treatment of Pain* adopted by reference in NAC 630.187.

2. As used in this section:

(a) "Acute pain" has the meaning ascribed to it in section 3 of the *Model Guidelines for the Use of Controlled Substances for the Treatment of Pain* adopted by reference in NAC 630.187.

(b) "Chronic pain" has the meaning ascribed to it in section 3 of the *Model Guidelines for the Use of Controlled Substances for the Treatment of Pain* adopted by reference in NAC 630.187.

(c) "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.

~~[(d) "Medical assistant" means any person who:~~

~~(1) Is employed by a physician or physician assistant;~~

~~(2) Is under the direction and supervision of the physician or physician assistant;~~

~~(3) Assists in the care of a patient; and~~

~~(4) Is not required to be certified or licensed by an administrative agency to provide that assistance.]~~

Sec. 10. NAC 630.380 is hereby amended to read as follows:

630.380 1. A physician 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 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 or herself out as or permitted another to represent the physician assistant to be a licensed physician;

(c) Has performed medical services otherwise than:

(1) Pursuant to NAC 630.375; or

(2) At the direction or under the supervision of the supervising physician of the physician assistant;

(d) Has performed medical services which have not been approved by the supervising physician of the physician assistant, unless the medical services were performed pursuant to NAC 630.375;

(e) Is guilty of gross or repeated malpractice in the performance of medical services for acts committed before October 1, 1997;

(f) Is guilty of malpractice in the performance of medical services for acts committed on or after October 1, 1997;

(g) 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;

(h) 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 the supervising physician of the physician assistant;

(i) Has been convicted of a violation of any federal or state law regulating the prescribing, possession, distribution or use of a controlled substance;

(j) Is not competent to provide medical services;

(k) Failed to notify the Board of an involuntary loss of certification by the National Commission on Certification of Physician Assistants within 30 days after the involuntary loss of certification;

(l) Is guilty of violating a provision of NAC 630.230 ~~[;]~~ ***or section 7 of this regulation;***

(m) Is guilty of violating a provision of NRS 630.301 to 630.3065, inclusive; or

(n) Is guilty of violating a provision of subsection 2 or 3 of NAC 630.340.

2. To institute disciplinary action against a physician assistant, a written complaint, specifying the charges, must be filed with the Board by the investigative committee of the Board.

3. A physician assistant is not subject to disciplinary action solely for prescribing or administering to a patient under the care of the physician assistant a controlled substance which is listed in schedule II, III, IV or V by the State Board of Pharmacy pursuant to NRS 453.146.