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Nevada State Board of Medical Examiners

NOTICE OF INTENT TO ACT UPON REGULATION

Notice of Hearing for the Repeal of Regulation of the
Nevada State Board of Medical Examiners

The Nevada State Board of Medical Examiners (Board) will hold a public hearing at 11:00 a.m., on Monday, November 19, 2018, at the Nevada State Board of Medical Examiner's office located at 9600 Gateway Drive, Reno, Nevada 89521 and videoconferenced to the Nevada State Board of Dental Examiners, located at 6010 S. Rainbow Blvd., Bldg. A., Ste. 1, Las Vegas, Nevada 89118. The purpose of the hearing is to receive comments from all interested persons regarding the repeal of a regulation that pertains to Chapter 630 of the Nevada Administrative Code.

R008-17 Repeal of NAC 630.205 in its entirety and amendment of NAC 630.187 to remove reference to Dietary Guidelines and update Guidelines for Chronic Use of Opioids.

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

(In this space, state:

1. The need for and the purpose of the proposed regulation or amendment.

The proposed repeal is necessary to clarify existing Board policy regarding the prescription of appetite suppressants. It is the position of the Board that the regulation no longer reflects the standard of care. The proposed amendment of NAC 630.187 removes reference to the Dietary Guidelines, which are no longer necessary if NAC 630.205 is repealed. The amendment also updates the latest Guidelines on the Chronic Use of Opioid Analgesics.

2. Either the terms or the substance of the regulations to be adopted, amended or repealed, or a description of the subjects and issues involved.

This regulation repeals the requirements for prescribing appetite suppressants and adopts the most recent guidance from the Federation of State Medical Boards for the chronic use of opioid analgesics.

3. The estimated economic effect of the regulation on the business which it is to regulate and on the public. These must be stated separately and in each case must include:

- (a) Both adverse and beneficial effects; and
- (b) Both immediate and long-term effects.

- a. The Board does not believe that the proposed amendment will have a direct economic effect on the business of the practice of medicine or the public. However, the estimated economic effect, if any, is likely to be beneficial by decreasing costs to both businesses and patients regarding the prescription of appetite suppressants. The updated guidance on the chronic use of opioid analgesics is likely to be beneficial to businesses to provide more instruction on prescription of opioids.
- b. The immediate and long-term effects are expected to be similar. The repeal of the appetite suppressant regulation will allow licensees more leeway in scheduling their patients to be seen before prescribing appetite suppressants. The guidance on chronic use of opioid analgesics will provide more guidance to licensees for prescribing opioids.

4. The estimated cost to the agency for enforcement of the proposed regulation.

Enforcement of the proposed amendment will not result in an increased cost to the Board.

5. A description of and citation to any regulations of other state or local governmental agencies which the proposed regulation overlaps or duplicates and a statement explaining why the duplication or overlapping is necessary. If the proposed regulation overlaps or duplicates a federal regulation, the notice must include the name of the regulating federal agency.

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

6. If the regulation is required pursuant to federal law, a citation and description of the federal law.

Not applicable.

7. If the regulation includes provisions which are more stringent than a federal regulation that regulates the same activity, a summary of such provisions.

Not applicable.

8. Whether the proposed regulation establishes a new fee or increases an existing fee.

The proposed regulation does not establish new fees or increase existing fees.

Persons wishing to comment upon the proposed regulation of the Board 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, attention Jasmine Mehta, Deputy Executive Director, 9600 Gateway Drive, Reno, Nevada 89521.

Written submissions must be received by the Nevada State Board of Medical Examiners on or before Monday, November 19, 2018. 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.

A copy of this notice and the regulation to be adopted will be on file at the Nevada State Library and Archives, 100 N. 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 the office of the Board at 9600 Gateway Drive, Reno, Nevada 89521, and in all counties in which an office of the agency is not maintained, at the main public library or county office, for inspection and copying by members of the public during business hours. This notice and the text of the proposed regulation is 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> and www.medboard.nv.gov. 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.

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	Battle Mountain, Nevada
Lincoln County Library	Pioche, Nevada
Lyon County Library	Yerington, Nevada
Mineral County Library	Hawthorne, Nevada
Pershing County Library	Lovelock, Nevada
Storey County Commissioners Office	Virginia City, Nevada
Tonopah Public Library (Nye County)	Tonopah, Nevada
White Pine County Library	Ely, Nevada

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

LCB File No. R008-17

June 4, 2018

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

AUTHORITY: §§1-3, NRS 630.130 and 630.275.

A REGULATION relating to health care; revising provisions relating to certain publications adopted by the Board of Medical Examiners by reference; revising provisions governing certain conduct a physician or physician assistant is prohibited from engaging in; repealing certain provisions which authorize the prescription of appetite suppressants; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law requires the Board of Medical Examiners to establish by regulation the standards for licensure of physicians and physician assistants, including regulations which set forth the medical services which a physician assistant is authorized to perform. (NRS 630.130, 630.275) Existing law also authorizes an agency to adopt by reference in a regulation material published by another authority if certain requirements are satisfied. (NRS 233B.040)

Existing regulations prohibit a physician or physician assistant from engaging in the practice of writing prescriptions for controlled substances to treat acute pain or chronic pain in a manner that deviates from the policies set forth in the *Model Policy on the Use of Opioid Analgesics in the Treatment of Chronic Pain*. (NAC 630.230) **Section 2** of this regulation removes the reference to that existing publication and instead prohibits a physician or physician assistant from engaging in the practice of writing such prescriptions in a manner that deviates from the policies of a different publication, namely, the *Guidelines for the Chronic Use of Opioid Analgesics*. In accordance with this revision, **section 1** of this regulation provides for purposes of this prohibition that the Board instead adopts by reference the *Guidelines for the Chronic Use of Opioid Analgesics*, which was published in April 2017, and any subsequent revision of that publication that has been approved by the Board for use in this State.

Existing regulations authorize certain physicians and physician assistants to prescribe an appetite suppressant to control the weight of a patient if certain requirements are satisfied. Those requirements include either a determination by the physician or physician assistant that the

patient's obesity represents a threat to the patient's health or the fact that the patient's weight exceeds by not less than a certain percentage the upper limit of the patient's healthy weight as described in the publication *Dietary Guidelines for Americans, 2010*. (NAC 630.205) **Section 3** of this regulation repeals that provision, and **section 1** removes the provision which adopted by reference the publication *Dietary Guidelines for Americans, 2010*.

Section 1. NAC 630.187 is hereby amended to read as follows:

630.187 1. The Board hereby adopts by reference ~~†~~

~~—(a) The Model Policy on the Use of Opioid Analgesics in the Treatment of Chronic Pain, July 2013,†~~ *the Guidelines for the Chronic Use of Opioid Analgesics, April 2017*, published by the Federation of State Medical Boards of the United States, Inc. , ~~†~~ and

~~—(b) The Dietary Guidelines for Americans, 2010, 7th edition, published jointly by the United States Department of Health and Human Services and the Department of Agriculture pursuant to 7 U.S.C. § 5341,†~~

~~†~~ and any subsequent revision of ~~{those publications}~~ *the publication* that has been approved by the Board for use in this State. Each revision of ~~{those publications}~~ *the publication* shall be deemed approved by the Board unless it disapproves of the revision within 180 days after the date of publication of the revision.

2. The most recent publication of ~~†~~

~~(a) The Model Policy on the Use of Opioid Analgesics in the Treatment of Chronic Pain}†~~ *the Guidelines for the Chronic Use of Opioid Analgesics* that has been approved by the Board will be available for inspection at the office of the Board of Medical Examiners, ~~††105 Terminal Way, Suite 301, Reno, Nevada 89502,†~~ *9600 Gateway Drive, Reno, Nevada 89521*, or may be obtained, free of charge, from the Federation of State Medical Boards of the United States, Inc.,

400 Fuller Wiser Road, Eules, Texas 76039, or from the Federation of State Medical Boards of the United States, Inc., at the Internet address <http://www.fsmb.org>.

~~[(b) The *Dietary Guidelines for Americans* that has been approved by the Board will be available for inspection at the office of the Board of Medical Examiners, 1105 Terminal Way, Suite 301, Reno, Nevada 89502, or may be obtained, free of charge, from the Office of Disease Prevention and Health Promotion of the United States Department of Health and Human Services at the Internet address <http://www.health.gov/dietaryguidelines>.]~~

3. The Board shall:

(a) Review each revision of ~~the~~ *the* publication described in subsection 1 to ensure its suitability for this State; and

(b) File a copy of each revision of ~~the~~ *the* publication described in subsection 1 that it approves with the Secretary of State and the State Library, Archives and Public Records Administrator.

Sec. 2. 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 or her presence at a time when he or she was not in attendance or falsify those records to indicate that procedures were performed by him or her which were in fact not performed by him or her;

(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 or her own office;
- (g) 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;
- (h) Fail to provide adequate supervision of a medical assistant who is employed or supervised by the physician or physician assistant, including, without limitation, supervision provided in the manner described in NAC 630.810 or 630.820;
- (i) If the person is a physician, fail to provide adequate supervision of a physician assistant or an advanced practice registered nurse;
- (j) 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;
- (k) Engage in the practice of writing prescriptions for controlled substances to treat acute pain or chronic pain in a manner that deviates from the policies set forth in the ~~Model Policy on the Use of Opioid Analgesics in the Treatment of Chronic Pain~~ Guidelines for the Chronic Use of Opioid Analgesics adopted by reference in NAC 630.187; or

(l) Administer or use, or allow any person under his or her supervision, direction or control to administer or use, a single-use medical device:

(1) For more than one procedure;

(2) For more than one patient; or

(3) In a manner inconsistent with the manufacturer's instructions or directions included on or with the single-use medical device.

2. As used in this section:

(a) "Chronic pain" has the meaning ascribed to it in section ~~HHH~~ 3 of the ~~Model Policy on the Use of Opioid Analgesics in the Treatment of Chronic Pain~~ Guidelines for the Chronic Use of Opioid Analgesics adopted by reference in NAC 630.187.

(b) "Single-dose vial" means a vial, including, without limitation, a sealed sterile vial, which may be accessed by insertion of a needle and which, according to the manufacturer's instructions:

(1) Contains only one dose of a medication; and

(2) May be used for only one patient.

(c) "Single-use medical device" means a medical device that is intended for one use or on a single patient during a single procedure and includes, without limitation, a blade, clip, catheter, implant, insufflator, lancet, needle, sleeve, syringe and single-dose vial.

Sec. 3. NAC 630.205 is hereby repealed.

TEXT OF REPEALED SECTION

630.205 Prescription of appetite suppressants. (NRS 630.130, 630.275)

1. A physician or physician assistant who is authorized to prescribe controlled substances may prescribe an appetite suppressant to control the weight of a patient if the appetite suppressant is prescribed for use in the treatment of exogenous obesity as part of a program of medical treatment which includes dietary restrictions, modification of behavior and exercise and:

(a) The physician or physician assistant determines that the patient's obesity represents a threat to the patient's health; or

(b) The patient's weight exceeds by not less than 20 percent the upper limit of the patient's healthy weight as described in the *Dietary Guidelines for Americans* adopted by reference in NAC 630.187.

2. A physician or physician assistant shall not prescribe an appetite suppressant for more than 3 months, unless the patient:

(a) Has lost an average of not less than 2 pounds per month since he or she began taking the appetite suppressant; or

(b) Has maintained his or her weight at the level which was established by the patient's physician or a physician assistant under the supervision of his or her physician.

3. A physician or physician assistant who prescribes an appetite suppressant for more than 3 months shall maintain a record of the patient's weight at the beginning and end of each month during which the patient takes the appetite suppressant.

4. Before prescribing an appetite suppressant, a physician or physician assistant shall obtain a medical history and perform a physical examination of the patient and conduct appropriate studies to determine if there are any contraindications to the use of the appetite suppressant by the patient.

5. As used in this section, "appetite suppressant" means a drug or other substance listed in schedule IV pursuant to NAC 453.540 which is used to suppress the appetite of a natural person.