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December 2, 2016

Via Fax (775) 850-1444 and US Mail

Leo Basch, Board President  
Nevada State Board of Pharmacy  
431 W. Plumb Lane  
Reno, Nevada

Re: Attorney General Opinion No. 2016-10

Dear Mr. Basch:

Attached please find the above referenced Attorney General Opinion. I will forward the original via mail as well.

Sincerely,

By: Marilyn Millam  
Marilyn Millam, assistant to  
Sophia Long  
Deputy Attorney General

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December 2, 2016

OPINION NO. 2016-10

PHARMACY BOARD; CONTROLLED SUBSTANCES; VETERINARIANS: The Nevada Legislature granted the Pharmacy Board specific authority to enact NAC 639.742 to require all “practitioners” – including veterinarians – who wish to dispense controlled substances or dangerous drugs to register with the Pharmacy Board. All practitioners need to register.

Leo Basch, Board President  
Nevada State Board of Pharmacy  
431 W. Plumb Lane  
Reno, Nevada 89509

Dear Mr. Basch:

On behalf of the Nevada State Board of Pharmacy, you have requested a formal opinion from the Office of the Attorney General pursuant to Nevada Revised Statute (NRS) 228.150. Specifically, whether Nevada veterinarians are subject to the registration and dispensing requirements found in Chapter 639 of the Nevada Administrative Code (NAC).

BACKGROUND

The Nevada Legislature has granted the Nevada State Board of Pharmacy (Pharmacy Board) authority to “regulate the sale and dispensing of poisons, drugs, chemicals and medicines.” NRS 639.070(1)(f). To implement its regulatory authority, the Pharmacy Board may “adopt regulations governing the dispensing of poisons, drugs, chemicals and medicines.” NRS 639.070(1)(d). “Dispense” is defined by statute to include

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delivery of "a controlled substance or dangerous drug by an ultimate user . . . or pursuant to the lawful order of a practitioner . . ." NRS 639.0065(1). The statutory definition of "practitioner" includes veterinarians. NRS 639.0125. Consistent with this statutory authority, the Pharmacy Board has enacted a regulation requiring that "[a] practitioner who wishes to dispense controlled substances or dangerous drugs must apply to the Board on an application provided by the Board for a certificate of registration to dispense controlled substances or dangerous drugs." NAC 639.742. The Pharmacy Board's regulations set forth additional requirements that each registered dispensing practitioner must follow when obtaining, storing, handling and dispensing prescription medication to their patients. See NAC 639.742 through 639.745.

Although the registration requirement in NAC 639.742 applies to all practitioners who wish to dispense to their patients, it has not been the practice of the Pharmacy Board or the Nevada State Board of Veterinary Medical Examiners (Veterinary Board) to require all veterinarians to register with the Pharmacy Board before dispensing prescription medication to their patients.

Additionally, the Pharmacy Board and each practitioner's primary licensing board require that the practitioner strictly adhere to the Pharmacy Board's dispensing regulations when dispensing to the practitioner's patients. Despite the adoption by the Pharmacy Board of dispensing regulations governing veterinarians, the Veterinary Board has separately enacted dispensing regulations found at NAC 638.0628 and NAC 638.0629.

#### QUESTION ONE

Are Nevada veterinarians subject to the registration requirements of NAC 639.742, such that a veterinarian who wishes to dispense controlled substances or dangerous drugs is required to first apply to the Board of Pharmacy for a certificate of registration to dispense prescription medications?

#### SUMMARY ANSWER TO QUESTION ONE

Yes. Administrative agencies possess only those powers expressly granted by the Nevada Legislature or those necessarily incidental to carrying out those powers. The Nevada Legislature granted the Pharmacy Board specific authority to enact NAC 639.742 which requires that all "practitioners," including "veterinarians," who are included in the statutory definition of "practitioner," who wish to dispense controlled substances or dangerous drugs register with the Pharmacy Board. While the Veterinary Board has general statutory authority under NRS 638.070(2)(a) to adopt regulations implementing the provisions of NRS Chapter 638 as they relate to the practice of veterinary medicine, the Veterinary Board has no specific authority to enact regulations governing the use or administration of controlled substances or dangerous drugs, nor does such authority appear to be necessarily incidental to carrying out the Veterinary Board's general powers.

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Therefore, as to dispensing controlled substances or dangerous drugs, the Pharmacy Board's authority supersedes the Veterinary Board's authority.

### ANALYSIS

The Pharmacy Board is a state administrative agency created by the Nevada Legislature pursuant to NRS Chapter 639. NRS Chapter 639 governs the practice of pharmacy. As an administrative agency, the Board does not have general or common law powers, but only such powers as have been conferred by law expressly or by statute, or which are necessary to the performance by the agency of its statutory duties. *City of Henderson v. Kilgore*, 122 Nev. 331, 334, 131 P.3d 11, 13 (2006); *Civil Aeronautics Bd. v. Delta Air Lines, Inc.*, 367 U.S. 316 (1961); *L. & A. Constr. Co. v. McCharen*, 198 So.2d 240 (Miss. 1967), cert. denied, 389 U.S. 945 (1967). The power to regulate controlled substances and dangerous drugs has been expressly conferred by statute upon the Pharmacy Board.

Regarding controlled substances, NRS Chapter 453 governs the use of controlled substances and NRS 453.146(1) specifically grants the Pharmacy Board the power to administer the provisions of NRS 453.011 to 453.552, inclusive.<sup>1</sup> Regarding dangerous drugs, NRS Chapter 454 governs the use of dangerous drugs and NRS 454.366 again specifically grants the Pharmacy Board the power to administer and enforce NRS 454.181 to 454.371, inclusive.<sup>2</sup> Within its own chapter, NRS 639.070(1)(f) specifically grants the Pharmacy Board the authority to "regulate the sale and dispensing of poisons, drugs, chemicals and medicines." The power conferred by law is clear: under NRS 453.146, NRS 454.366 and NRS 639.070, the Pharmacy Board possesses authority to regulate practitioners who dispense controlled substances and dangerous drugs.

As a preliminary matter, the Pharmacy Board has the authority to "adopt regulations governing the *dispensing* of poisons, drugs, chemicals and medicines." NRS 639.070(1)(d) (emphasis added). Pursuant to NRS 639.0065(1), "dispense" means "to deliver a controlled substance or dangerous drug to an ultimate user, patient or subject of research by or pursuant to the lawful order of a practitioner, including the prescribing by a practitioner, administering, packaging, labeling or compounding necessary to prepare the substance for that delivery." NRS 639.0065(1). In general, a practitioner who delivers controlled substances or dangerous drugs, or anyone who does so at the direction of a practitioner is subject to the regulatory authority of the Pharmacy Board.

Pursuant to its statutory authority, the Pharmacy Board has promulgated regulations that impose specific obligations upon practitioners who wish to dispense controlled substances or dangerous drugs. With regard to registration requirements, the Board enacted

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<sup>1</sup> NRS 453.031 states: "Board" means the State Board of Pharmacy.

<sup>2</sup> NRS 454.003 states: "Board" means the State Board of Pharmacy.

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NAC 639.742 which states: "A practitioner who wishes to dispense controlled substances or dangerous drugs must apply to the Board on an application provided by the Board for a certificate of registration to dispense controlled substances or dangerous drugs." NAC 639.742(1). Since NRS 639.0125(1) defines "practitioner" to include veterinarians among others, a veterinarian must secure a certificate of registration from the Pharmacy Board in order to dispense controlled substances or dangerous drugs.<sup>3</sup>

When the language of a statute is plain and unambiguous, there is no need to look for its meaning beyond the statute itself. *State, Div. of Ins. v. State Farm*, 116 Nev. 290, 293, 995 P.2d 482, 485 (2000). The statutory provisions of NRS Chapter 639 unambiguously confer upon the Pharmacy Board authority to regulate veterinarians who dispense controlled substances and dangerous drugs. Through NAC 639.742, the Pharmacy Board has, in turn, clearly imposed a registration requirement upon veterinarians who wish to dispense controlled substances or dangerous drugs. Notably, the Pharmacy Board did not provide for any exceptions to the registration requirement – it applies to any "practitioner."<sup>4</sup>

The Veterinary Board has enacted a conflicting regulation that allows for a veterinarian to avoid the Pharmacy Board's registration requirement if that veterinarian is employed by and works at a facility with another veterinarian who is registered with the Pharmacy Board. Subsection 1 of NAC 638.0629 states:

A veterinary facility at which controlled substances are possessed, administered, prescribed or dispensed shall ensure that *one or more veterinarians* who practice at that veterinary facility register and maintain a registration with the Drug Enforcement Administration of the United States Department of Justice and the State Board of Pharmacy.

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<sup>3</sup> NRS Chapter 453 (Controlled Substances) also includes veterinarians in the definition of practitioner. See NRS 453.126(1). NRS Chapter 454 (Dangerous Drugs) also includes veterinarians in the definition of practitioner. See NRS 454.00958(1).

<sup>4</sup> The Veterinary Board has stated that veterinarians are exempted by NRS 639.23505 from the Pharmacy Board's registration requirement because veterinarians are practitioners who do not dispense for human consumption. However, NRS 639.23505 does not grant a blanket exemption from the Pharmacy Board's regulatory authority. Rather, it sets forth a statutory prohibition against the issuance of a written prescription by a practitioner who (1) is not registered with the Pharmacy Board, (2) dispenses for human consumption, and (3) charges a patient for the substance or drug. In other words, it applies to the issuance of written prescriptions by licensed practitioners who would otherwise be authorized to issue written prescriptions under NRS 639.235. Given its narrow application, NRS 639.2305 does not speak to the more general issue of who may "dispense" controlled substances or dangerous drugs in Nevada.

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NAC 638.0629(1) (Emphasis added). Subsection 2 of the regulation further provides that:

A veterinarian who is not registered with the Drug Enforcement Administration of the United States Department of Justice and the State Board of Pharmacy as described in subsection 1 may possess, administer, prescribe or dispense a controlled substance at a veterinary facility if the veterinarian:

- (a) Is an employee or agent of the veterinarian who is registered pursuant to subsection 1;
- (b) Practices in the same veterinary facility as the veterinarian who is registered pursuant to subsection 1;
- (c) Possesses, administers, prescribes or dispenses the controlled substance in the normal course of his or her employment; and
- (d) Complies with all the requirements and duties prescribed by law relating to the possession, administration, prescribing and dispensing of a prescription drug.

NAC 638.0628(2).

According to NAC 638.0628, not all veterinarians who dispense controlled substances or dangerous drugs are subject to the registration requirement set forth by the Pharmacy Board. But, "the powers of an administrative agency are limited to those powers specifically set forth by statute" or those necessary to carry such powers into effect. *Kilgore*, 122 Nev. at 334, 131 P.3d at 13 (citing *Clark Co. School Dist. V. Teachers Ass'n*, 115 Nev. 98, 102, 977 P.2d 1008, 1010 (1999); see also, *Andrews v. Nev. St. Bd. of Cosmetology*, 86 Nev. 207, 467 P.2d 96 (1970)). Here, unlike the Pharmacy Board, the Veterinary Board has no express statutory authority to regulate practitioners who dispense controlled substances or dangerous drugs, or to exempt veterinarians from the Pharmacy Board's statutorily conferred power to regulate dispensing practitioners.

"Rules of statutory construction provide that a specific statute takes precedence over a general statute." *State Indus. Ins. System v. Miller*, 112 Nev. 1112, 1118, 923 P.2d 577, 580 (1996) (internal citations and quotations omitted). Although the provisions of NRS Chapter 638 do not preclude the Veterinary Board from regulating in the same field as the Pharmacy Board, neither do they authorize the Veterinary Board to adopt regulations that govern the dispensing of controlled substances and dangerous drugs by veterinarians. By contrast, the provisions of NRS Chapter 639 specifically authorize the Pharmacy Board to adopt regulations. It follows that the Veterinary Board has no authority to adopt regulations that are less restrictive than those of the Pharmacy Board as they relate to the dispensing of controlled substances and dangerous drugs. See *Ronnow v. City of Las Vegas*, 57 Nev. 332, 365, 65 P.2d 133, 146 (1937) ("Where one statute deals with a subject in general and

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comprehensive terms, and another deals with another part of the same subject in a minute and definite way, the special statute, to the extent of any necessary repugnancy, will prevail over the general one.") Therefore, insofar as the Pharmacy Board has a specific statutory mandate to regulate controlled substances and dangerous drugs used in the practice of veterinary medicine, its authority to impose registration requirements upon veterinarians who dispense controlled substances and dangerous drugs supersede that of the Veterinary Board. Consequently, NAC 639.742 prevails over NAC 638.0628.<sup>5</sup>

#### QUESTION TWO

Is a Nevada veterinarian who is registered with the Board of Pharmacy to dispense controlled substances or dangerous drugs subject to the additional requirements of NAC 639.742 through 639.745, which regulate the purchasing, storage, handling and dispensing of prescription medications?

#### SUMMARY ANSWER TO QUESTION TWO

Yes. Any veterinarian who wishes to dispense controlled substances or dangerous drugs is subject to the Pharmacy Board's regulations governing the purchasing, storage, handling and dispensing of prescription medications as set forth at NAC 639.742 through 639.745.

#### ANALYSIS

Discussed above, NRS 453.146(1), NRS 454.366, and NRS 639.070(1)(f) grant the Pharmacy Board authority to regulate controlled substances and dangerous drugs used in the practice of veterinary medicine. Further, NRS 639.070(1)(g) expressly grants the Pharmacy Board authority to "regulate the means of recordkeeping and storage, handling, sanitation and security of drugs, poisons, medicines, chemicals and devices." To implement its regulatory powers in this area, the Pharmacy Board has enacted NAC 639.742 through 639.745. These regulations set forth requirements that registered practitioners must follow when obtaining, storing, handling and dispensing prescription medication to their patients. Therefore, in addition to registering with the Pharmacy Board, any veterinarian who wishes to dispense controlled substances or dangerous drugs in Nevada must comply with all of the other requirements of NAC 639.742 through 639.745.

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<sup>5</sup> While this opinion concludes that the Pharmacy Board has the authority to require that veterinarians comply with the Pharmacy Board's regulations governing the dispensing of controlled substances or dangerous drugs, nothing in this opinion should be construed as preventing the Pharmacy Board from enacting regulations that would ratify the longstanding practice described in the Pharmacy Board's letter requesting this opinion.

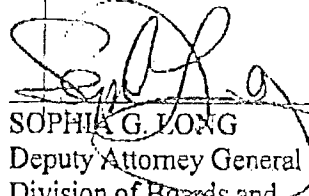
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Finally, it should be noted that the Veterinary Board has its own set of dispensing regulations as set forth at NAC 638.0628 and 638.0629. As noted above, these regulations may not be less restrictive than those enacted by the Pharmacy Board as they pertain to the dispensing of controlled substances and dangerous drugs. Consequently, they may not be construed to relieve veterinarians of any of their obligations to the Pharmacy Board as set forth at NAC 639.742 through 639.745.

Sincerely,

ADAM PAUL LAXALT  
Attorney General

By:



SOPHIA G. LONG  
Deputy Attorney General  
Division of Boards and  
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SGL/MAM