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# Nevada State Board of Pharmacy

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September 2, 2020

Lynn S. Fulstone, Esq.  
Fennemore Craig  
300 S. Fourth Street – Suite 1400  
Las Vegas, NV 89101

**Re: *Petition for Declaratory Order or Advisory Opinion***

Dear Ms. Fulstone:

The Nevada State Board of Pharmacy (Board) is in receipt of your February 27, 2020, petition requesting a declaratory order or advisory opinion pursuant to NRS 233B.120 and NAC 639.150 (Petition). The Board's issuance of a declaratory order or advisory opinion pursuant to NRS 233B.120 is limited to matters within the Board's jurisdiction.<sup>1</sup>

The Petition, submitted on behalf of the Nevada Association of Nurse Anesthetists, requests that the Board make determinations on the authority of a certified registered nurse anesthetist (CRNA) to possess and administer preanesthetic medications, intraoperative anesthesia and postanesthetic medications for surgical procedures in a medical facility.

CRNAs are not licensed by the Board; rather, CRNAs are licensed, and their scope of practice largely regulated, by the Nevada State Board of Nursing (Nursing Board) pursuant to NRS Chapter 632. A CRNA is a registered nurse who has "completed a nationally accredited program in the science of anesthesia" and is certified by the Nursing Board "to administer anesthetic agents to a person under the care of a licensed physician, a licensed dentist or a licensed podiatric physician."<sup>2</sup>

However, the Board is charged with regulating the practice of pharmacy and enforcing the provisions of chapters 453, 454 and 639 of the Nevada Revised Statutes.<sup>3</sup>

## QUESTION ONE

**Does Nevada law authorize Certified Registered Nurse Anesthetists to select and order anesthetic agents from a licensed institutional pharmacy in order to possess and administer these agents to patients of the medical facility?**

<sup>1</sup> See, e.g., *Tom v. Innovative Home Sys., LLC*, 132 Nev. 161, 368 P.3d 1219 n.8 (2016); *State Dep't of Bus. & Indus. v. Nev. Ass'n Servs.*, 128 Nev. 362, 364, 294 P.3d 1223, 1224 (2012).

<sup>2</sup> NRS 632.014.

<sup>3</sup> See NRS 453.146; NRS 453.221(1); NRS 454.366; NRS 639.070(1); see also *Dutchess Bus. Servs. v. Nev. State Bd. of Pharm.*, 124 Nev. 701, 191 P.3d 1159 (2008).

Lynn S. Fulstone, Esq.  
 September 2, 2020  
 Page 2 of 4

### ANALYSIS

No person may possess or administer<sup>4</sup> a controlled substance or a dangerous drug (collectively a prescription medication) in Nevada without specific statutory authority to do so.<sup>5</sup> The Nevada Legislature granted practitioners<sup>6</sup> broad authority in NRS chapters 453 and 454.<sup>7</sup> RNs are granted limited authority.<sup>8</sup>

Regarding controlled substances, NRS chapter 453 states in relevant part:

1. A controlled substance may be possessed and administered by the following persons:

- (a) A practitioner.
- (b) A registered nurse licensed to practice professional nursing or licensed practical nurse, *at the direction* of a physician, physician assistant, dentist, podiatric physician or advanced practice registered nurse, or *pursuant to a chart order*, for administration to a patient at another location.

....

NRS 453.375(1)(a) and (b) (*emphasis added*). Similarly, as to dangerous drugs, NRS chapter 454 states:

1. A drug or medicine referred to in NRS 454.181 to 454.371, inclusive, may be possessed and administered by:

- (a) A practitioner.

....

(c) Except as otherwise provided in paragraph (d), a registered nurse licensed to practice professional nursing or licensed practical nurse, *at the direction of* a prescribing physician, physician assistant licensed pursuant to chapter 630 or 633 of NRS, dentist, podiatric physician or advanced practice registered nurse, or *pursuant to a chart order*, for administration to a patient at another location.

....

NRS 454.213(1)(a) and (c) (*emphasis added*).

By these statutes the Nevada Legislature has granted practitioners general authority to possess and administer prescription medications. That authority is broad such that a practitioner can possess and maintain an inventory of prescription medications for his or her practice.

Conversely, the Legislature used qualifying language to delineate when a RN may possess and administer a prescription medication. A RN may possess and administer a

<sup>4</sup> See NRS 453.021; NRS 454.191 (“Administer” defined).

<sup>5</sup> See NRS 453.336; NRS 454.316; NRS 454.321.

<sup>6</sup> See NRS 453.126; NRS 454.00958 (“Practitioner” defined).

<sup>7</sup> NRS 453.375(1)(a); NRS 454.213(1)(a).

<sup>8</sup> NRS 453.375(1)(b); NRS 454.213(1)(c).

Lynn S. Fulstone, Esq.  
 September 2, 2020  
 Page 3 of 4

prescription medication “at the direction” of a practitioner, which usually occurs in a facility setting where the practitioner is located. A RN may also possess and administer a prescription medication “pursuant to a chart order, for administration to a patient at another location.” Chart orders are patient-specific and medication-specific.<sup>9</sup> The Legislature did not grant RNs authority to possess a prescription medication (or an inventory of prescription medications) outside these circumstances.

Petitioners note that the Nursing Board has by regulation authorized CNRAs to perform certain functions. NAC 632.500 states in relevant part:

1. A certified registered nurse anesthetist may, in addition to those functions authorized for the registered nurse, perform the following acts, when it has been determined by a patient’s physician, dentist or podiatric physician that an anesthetic is necessary for a procedure, test or other treatment, in accordance with the applicable policies and procedures regarding the administration of anesthetics:

....

- (e) Select, order and administer preanesthetic medication;
- (f) Order, prepare and use any equipment and supplies necessary for the administration of anesthesia and perform or order any necessary safety checks on the equipment;
- (g) Order and prepare any drugs used for the administration of anesthesia;
- (h) Select and order anesthesia techniques, agents and adjunctive drugs;

....

- (q) Select, order and administer postanesthetic medication;

....

The authority conferred upon CRNAs pursuant to NAC 632.500(1) to possess and administer anesthetic agents to patients is subject to the requirements and limitations of NRS 453.375(1)(b) and NRS 454.213(1)(c).<sup>10</sup> Therefore, CNRAs may only possess and administer anesthetic agents to patients “at the direction” of a practitioner or “pursuant to a chart order.”

#### CONCLUSION

Certified Registered Nurse Anesthetists may only possess and administer anesthetic agents to patients “at the direction” of a practitioner or “pursuant to a chart order.”

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<sup>9</sup> See NRS 639.004: “Chart order” means an order entered on the chart of a patient in a hospital, facility for intermediate care or facility for skilled nursing which is licensed as such by the Division of Public and Behavioral Health of the Department of Health and Human Services or on the chart of a patient under emergency treatment in a hospital by a practitioner or on the written or oral order of a practitioner authorizing the administration of a drug to the patient.

<sup>10</sup> “[W]henver possible, a court will interpret a rule or statute in harmony with other rules or statutes.” *Nev. Power Co. v. Haggerty*, 115 Nev. 353, 364, 989 P.2d 870, 877 (1999).

Lynn S. Fulstone, Esq.  
 September 2, 2020  
 Page 4 of 4

## QUESTION TWO

**Does the Board have the statutory authority to license Certified Registered Nurse Anesthetists to select and order anesthetic agents from a licensed institutional pharmacy in order to possess and administer these agents to patients of the medical facility?**

### ANALYSIS

The Board is a state administrative agency created by the Legislature whose powers are limited to those specifically set forth in statute.<sup>11</sup> “The grant of authority to the agency must be clear.”<sup>12</sup> The Board may only issue a certificate, license or permit to the extent permitted by NRS 453.226 and chapter 639. Likewise, the Board may only regulate the holder of any certificate, license or permit to the extent permitted by law. The Board has not been granted the authority to license CRNAs to possess and administer anesthetic agents to patients in any manner that exceeds the requirements and limitations of, or otherwise conflicts with, NRS 453.375(1)(b) and NRS 454.213(1)(c).

### CONCLUSION

The Board lacks the statutory authority to license Certified Registered Nurse Anesthetists to select and order anesthetic agents from a licensed institutional pharmacy in order to possess and administer these agents to patients of the medical facility in any manner that conflicts with NRS 453.375(1)(b) and NRS 454.213(1)(c).

The foregoing advisory opinion applies only to the specific facts and circumstances defined herein. Facts and circumstances that differ from those in this opinion may result in an opinion contrary to this opinion. No inferences regarding the provisions of Nevada law cited and discussed in this opinion may be drawn to apply generally to any other facts and circumstances.

Best regards,



Brett Kandt  
 General Counsel  
 Nevada State Board of Pharmacy

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<sup>11</sup> See *Andrews v. Nevada State Board of Cosmetology*, 86 Nev. 207, 208, 467 P.2d 96, 96-97 (2007).

<sup>12</sup> *Id.*