Nevada State Board of Pharmacy

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November 1, 2019

NOTICE OF INTENT TO ACT UPON A REGULATION

Notice of Hearing for the Adoption and Amendment of
Regulations of the Nevada State Board of Pharmacy

The Nevada State Board of Pharmacy will hold a Public Hearing at 9:00 a.m. on Thursday, December 5, 2019, at the Hyatt Place, 1790 East Plumb Lane, Reno, Nevada. The purpose of the hearing is to receive comments from all interested persons regarding the adoption and amendment of regulations that pertain to Chapters 453 and/or 639 of the Nevada Administrative Code.

The following information is provided pursuant to the requirements of NRS 233B.060:

Amendment of Nevada Administrative Code (NAC) 639. NEW LANGUAGE. Forwarding of information between pharmacies: New prescriptions. (LCB File No. R008-19)

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

The proposed amendment to NAC 639 will allow for the forwarding of information between pharmacies regarding new prescriptions that have not been filled by any pharmacy, which will improve the delivery of pharmaceutical care in Nevada.

2. Either the terms or the substance of the regulations to be adopted and amended.

A copy of the proposed regulation amendment is attached to this notice.

3. The estimated economic effect of the regulation on the business which it is to regulate and on the public:

(a) Both adverse and beneficial effects.

There should be no adverse economic impact from this regulation amendment on the public or pharmacies; rather this will improve efficiency in the delivery of health care.

(b) Both immediate and long-term effects.

Both the immediate or long-term economic effects on the public and on pharmacies will be positive.

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

There will be no additional or special costs incurred by the Board of Pharmacy for enforcement of this regulation amendment.

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.

The Board of Pharmacy is not aware of any similar regulations of any other state or local governmental agency that the proposed regulation amendment overlaps or duplicates.

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

The regulation is not required by federal law.

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

The Board of Pharmacy is not aware of any similar federal regulation amendments of the same activity in which the state regulation is more stringent.

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

This regulation amendment does not provide a new or increase of fees.

Amendment of Nevada Administrative Code (NAC) Chapter 639. Reporting certain matters relating to discipline and practice without the appropriate license, certificate or permit to the National Practitioner Data Bank (LCB File No. R070-19)

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

U.S. Code § 1396r-2 requires federal and state licensing and certification agencies, including boards of pharmacy, to report final adverse actions taken against health care practitioners, providers, or suppliers to the National Practitioner Data Bank. The proposed amendments will add a new regulation requiring any discipline imposed by the Board to be reported to the National Practitioner Data Bank and to any professional licensing board that licenses a practitioner, and require any final decision that a person has engage in unlicensed practice in this state be reported to the National Practitioner Data Bank and to any professional licensing board that licenses a practitioner.

2. Either the terms or the substance of the regulations to be adopted and amended.

A copy of the proposed regulation amendment is attached to this notice.

3. The estimated economic effect of the regulation on the business which it is to regulate and on the public:

(a) Both adverse and beneficial effects.

There should be no adverse economic impact from this regulation amendment on the public; rather the public will benefit from greater transparency in the disciplinary history of practitioners. The impact will be adverse for practitioners that break the law and beneficial for those practitioners that practice healthcare safety.

(b) Both immediate and long-term effects.

Both the immediate and long-term economic effect on the public will be positive for the public and most practitioners that deliver safe healthcare.

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

There will be no additional or special costs incurred by the Board of Pharmacy for enforcement of this regulation amendment.

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.

The Board of Pharmacy is not aware of any similar regulations of any other state or local governmental agency that the proposed regulation amendment overlaps or duplicates.

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

U.S. Code § 1396r-2 requires federal and state licensing and certification agencies, including boards of pharmacy, to report final adverse actions taken against health care practitioners, providers, or suppliers to the National Practitioner Data Bank.

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

The Board of Pharmacy is not aware of any similar federal regulation amendments of the same activity in which the state regulation is more stringent.

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

This regulation amendment does not provide a new or increase of fees.

Persons wishing to comment upon the proposed action 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 Pharmacy, 985 Damonte Ranch Parkway, Suite 206 – Reno, NV 89521, or at e-mail address: shunting@pharmacy.nv.gov. Written submissions must be received by the Board at least fourteen days before the scheduled public hearing. If no person who is directly affected by the

proposed action appears to request time to make an oral presentation, the Board may proceed immediately to act upon any written submissions.

A copy of this notice and the regulation to be adopted and amended 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 and amended will be available 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. The text of each regulation will include the entire text of any section of the Nevada Administrative Code which is proposed for amendment or repeal. 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.

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:

Nevada State Board of Pharmacy
Reno, Nevada

Nevada State Board of Pharmacy
Las Vegas, Nevada

Mineral County Courthouse
Hawthorne, Nevada

Elko County Courthouse
Elko, Nevada

Washoe County Courthouse
Reno, Nevada

PROPOSED REGULATION OF THE

STATE BOARD OF PHARMACY

LCB File No. R008-19

September 3, 2019

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

AUTHORITY: §§1-4, NRS 639.070 and 639.0745.

A REGULATION relating to prescriptions; prescribing requirements relating to transferring information concerning a prescription; requiring the recording of certain information in the record of a transferred prescription; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law authorizes the State Board of Pharmacy to adopt regulations concerning the transfer of information between pharmacies relating to prescriptions. (NRS 639.0745) Existing regulations prescribe requirements governing the transfer of information between pharmacies relating to a prescription for a dangerous drug or controlled substance. (NAC 639.713-639.7145) **Sections 1-4** of this regulation generally clarify which of these requirements apply to all transferred prescriptions and which requirements apply only to a prescription that is transferred after it has already been filled at least once.

Existing regulations prohibit the transfer of a prescription for a controlled substance listed in schedule II. (NAC 639.713) **Section 2** of this regulation instead prohibits the transfer of such a prescription more than one time.

Existing regulations require a pharmacist who transfers or receives information related to a prescription orally to record certain information in the record of the prescription. (NAC 639.714) **Section 3** of this regulation requires the recording of such information in the record of any transferred prescription. **Section 3** also adds to the information that must be recorded by the transferring pharmacist and the receiving pharmacist in the record of a transferred prescription for a controlled substance the registration number issued to the receiving pharmacy by the Drug Enforcement Administration. **Section 3** additionally requires a transferring pharmacy to take any measures necessary to ensure that the prescription cannot be refilled at that pharmacy. **Sections 1 and 4** of this regulation make conforming changes.

Section 1. NAC 639.580 is hereby amended to read as follows:

639.580 1. If the licensee of a pharmacy ceases to do business and permanently closes the pharmacy the licensee must:

(a) Place a sign in the front window of the pharmacy notifying the public of the name and address of the pharmacy to which the prescription files have been transferred. The sign must remain so placed for a period of 30 days unless sooner removed by the landlord or a new tenant.

(b) Return to the Executive Secretary his or her pharmacy license and license renewal certificates.

(c) Prepare separate inventories in duplicate of the controlled substances and dangerous drugs on the premises at the time of the closure and provide the purchaser thereof with copies of the inventories. Copies of the inventories must be retained by the seller and the purchaser for 2 years.

(d) If the licensee is transferring prescription files for controlled substances or dangerous drugs, comply with the provisions of NAC 639.713 ~~[and]~~ , 639.714 ~~[,]~~ ***and 639.7145, as applicable,*** and ensure that:

(1) The information relating to the refill of each prescription is included on the prescription; or

(2) If the licensee maintains his or her prescription files on a computer system, the information relating to the refill of each prescription is accessible by the computer system of the pharmacy to which the information is transferred.

(e) Notify the Executive Secretary in writing of:

(1) The method of disposition of the controlled substances and dangerous drugs;

(2) The name of the purchaser; and

(3) The kinds and amounts transferred.

2. The licensee shall cooperate with the Board to promote the efficient administration of this section.

Sec. 2. NAC 639.713 is hereby amended to read as follows:

639.713 1. Except as otherwise provided in subsection 4, a transfer of information between pharmacies relating to a prescription for a dangerous drug or controlled substance for the purpose of filling and dispensing that prescription is subject to the following conditions:

(a) Information relating to a prescription ***, including the total number of refills authorized*** and any remaining number of refills , may be transferred ***to another pharmacy*** orally, by a facsimile machine in accordance with NAC 639.7145 or by computer ~~[.]~~ ***in accordance with this section.***

(b) ~~[An oral]~~ ***A*** transfer must be communicated directly between two registered pharmacists.

(c) The original and the transferred prescriptions must be maintained for 2 years after the date on which the prescription was filled.

(d) Information relating to a prescription ***that has previously been filled*** may be transferred ***to another pharmacy*** by a computer if:

(1) The computer that transfers the information reduces, at the time the information is transferred, the number of refills authorized by the original prescription; and

(2) The computer that receives the information allows the transfer of the prescription for a controlled substance only once.

2. ~~[A pharmacist who receives]~~ ***If*** a prescription for a controlled substance which has ***previously*** been ***filled is*** transferred by a computer ~~[shall]~~ ***, the pharmacist that receives the prescription must*** inform the patient that the prescription may be transferred ***to another pharmacy*** only once.

3. A pharmacy shall not, without first notifying the Board:

(a) Sell, give or otherwise transfer all its prescription files, including information relating to patients and practitioners, to another pharmacy, including a pharmacy under its control or ownership; or

(b) Receive all the prescription files, including information relating to patients and practitioners, from another pharmacy, including a pharmacy under its control or ownership.

➥ A file transferred pursuant to this subsection is not a transfer of information between pharmacies for the purposes of subsection 1, regardless of whether the transfer occurs before or after the prescription is filled.

4. A prescription for a controlled substance listed in schedule II ***that has previously been filled*** must not be transferred pursuant to the provisions of this section.

Sec. 3. NAC 639.714 is hereby amended to read as follows:

639.714 1. Except as otherwise provided in subsection 3, a pharmacist who ~~[orally]~~ transfers the information relating to a prescription ***to another pharmacy*** pursuant to NAC 639.713 shall:

(a) Write the word "void" on the face of the prescription; and

(b) Record on the reverse side of the invalidated prescription the following information:

(1) The name of the pharmacist who transfers the information relating to the prescription;

(2) The date of the transfer;

(3) The name and address of the pharmacy to which the prescription is transferred; ~~[and]~~

(4) The name of the pharmacist who receives the information relating to the prescription ~~[.]~~ ***; and***

(5) If the prescription is for a controlled substance, the registration number issued by the Drug Enforcement Administration pursuant to 21 C.F.R. Part 1301 to the pharmacy to which the prescription is transferred.

2. The pharmacist who receives the information relating to the prescription that was transferred ~~[orally]~~ shall:

(a) ~~[Reduce]~~ ***If the information was transferred orally, reduce*** the transferred information to a written prescription;

(b) Write the word "transfer" on the face of the transferred prescription;

(c) If the prescription is for a controlled substance ~~[,]~~ ***and the prescription has previously been filled,*** inform the patient that the prescription may be transferred only once; and

(d) Record the following information on the transferred prescription:

(1) The name and address of the pharmacy from which the prescription was transferred;

(2) The name of the pharmacist who transferred the information relating to the prescription;

(3) ~~[The]~~ ***The date on which the original prescription was issued;***

(4) If the prescription has previously been filled, the serial number of the original prescription ~~[~~;

~~(4) The date the original prescription was issued and the most recent date of dispensing, if different; and,]~~ ***the date on which the prescription was most recently filled and the number of refills remaining;***

(5) The number of refills authorized by the original prescription ~~[, the date the prescription was most recently refilled and the number of refills remaining.]~~ ***; and***

(6) If the prescription is for a controlled substance, the registration number issued to the transferring pharmacy by the Drug Enforcement Administration pursuant to 21 C.F.R. Part 1301.

3. A pharmacy ~~[which maintains its records of prescriptions on a computer system]~~ shall ~~[invalidate in its system]~~ ***take any measures necessary to ensure that*** a prescription which has been ~~[orally]~~ transferred to another pharmacy ~~[. If the]~~ ***cannot be filled again by the transferring pharmacy, including, without limitation, invalidating the prescription in its computer system, if applicable.***

4. Upon transferring a prescription to another pharmacy, a pharmacy which maintains its records of prescriptions on a computer ***system which*** has the capability to maintain the information described in paragraph (b) of subsection 1 ~~[, the pharmacy:]~~ ***:***

(a) Shall maintain that information on its computer; and

(b) Is not required to record that information on the original transferred prescription.

Sec. 4. NAC 639.7145 is hereby amended to read as follows:

639.7145 1. Information relating to a prescription may be transferred from a pharmacy to another pharmacy by a facsimile machine pursuant to NAC 639.713 if:

(a) The transmission from the transferring pharmacy:

(1) Includes the information required by subsection 2 of NRS 639.2353, which may be provided in the form of an accurate printout of the pharmacy's computerized record of the prescription; and

(2) Except as otherwise provided in subsection 2, includes:

(I) A copy of the original prescription maintained in the records of the transferring pharmacy on which the pharmacist at the transferring pharmacy has signed the copy and written his or her license number; or

(II) The signature and handwritten license number of the pharmacist at the transferring pharmacy and a notation that specifically indicates that the pharmacist intends to transfer the prescription.

(b) The transmission is prepared and transmitted by a pharmaceutical technician or pharmacist at the transferring pharmacy.

~~[(c) Except as otherwise provided in subsection 3, the pharmacist at the transferring pharmacy processes the original prescription in the manner prescribed in paragraph (a) and subparagraphs (1), (2) and (3) of paragraph (b) of subsection 1 of NAC 639.714.]~~

2. A pharmacy may transfer prescriptions by facsimile machine to another pharmacy without complying with the provisions of subparagraph (2) of paragraph (a) of subsection 1 only upon application to and authorization by the Board. The Board may grant that authority to a pharmacy if the Board is satisfied that:

(a) The pharmacy's computer system will accurately represent the identity of the pharmacist responsible for the transfer; and

(b) The identity of the pharmacist responsible for the transfer cannot be falsified, modified, added or otherwise provided without the knowledge and assent of that pharmacist.

3. A pharmacy which maintains its records of prescriptions in a computer system shall invalidate in its system a prescription transferred by a facsimile machine to another pharmacy. ~~[A pharmacy which transfers a prescription by a facsimile machine is not required to process the original prescription in the manner prescribed in paragraph (c) of subsection 1 if the pharmacy cancels the prescription stored in its computer system in a manner which ensures that the prescription cannot be refilled by that pharmacy.]~~

PROPOSED REGULATION OF

THE STATE BOARD OF PHARMACY

LCB File No. R070-19

October 18, 2019

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

AUTHORITY: §1, NRS 639.070.

A REGULATION relating to pharmacy; requiring certain matters relating to discipline and practice without the appropriate license, certificate or permit to be reported to certain entities; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law authorizes the State Board of Pharmacy to: (1) conduct administrative proceedings to deny, suspend or revoke a person's registration to engage in the dispensing of a controlled substance in this State; (2) impose discipline on a holder of a certificate, license or permit issued by the Board; and (3) take certain actions against a person who practices or offers to practice pharmacy without the appropriate license, certificate or permit. (NRS 453.241, 639.255, 639.2895)

This regulation provides that if the Board takes action on a person's registration, imposes discipline on a holder of a certificate, license or permit issued by the Board or takes certain actions against a person for unauthorized practice, the Board must provide a copy of its order or decision to the National Practitioner Data Bank pursuant to federal law and to any professional licensing board or agency which has issued a license, registration, certificate or permit to the person.

Section 1. Chapter 639 of NAC is hereby amended by adding thereto a new section to read as follows:

1. If the Board:

(a) Denies, suspends or revokes a registration of a person pursuant to NRS 453.241;

(b) Imposes discipline on a person pursuant to NRS 639.255; or

(c) Issues a final decision of a determination pursuant to NRS 639.2895 that a person has violated subsection 1 of NRS 639.100, subsection 1 of NRS 639.2813 or NRS 639.285,

➥ the Board must disseminate copies of the order or decision, as applicable, of the Board as provided in subsection 2.

2. Copies of an order or decision described in subsection 1 must be provided by the Board to:

(a) The National Practitioner Data Bank pursuant to 42 U.S.C. § 1396r-2 and 45 C.F.R. Part 60; and

(b) Any other professional licensing board or agency of this State or another state that has issued a license, registration, certificate or permit to the person who is the subject of the order or decision, as applicable.