

Ethics in Government Law: NRS 281A Public Officers and Employees



Presented by:

Yvonne M. Nevarez-Goodson, Esq.
Executive Director

Nevada Commission on Ethics

Let's Get Ethical:

<https://www.youtube.com/watch?v=9sgJ1VRNuDE>

What is the Nevada Commission on Ethics?

■ The Commission

- The Ethics Commission consists of 8 members appointed to serve 4-year terms
 - 4 members appointed by the Governor
 - 4 members appointed by the Legislative Commission.

Interpret and enforce the Ethics In Government Law – NRS 281A

“Conflicts of Interest” for Public Officers and Public Employees



Nevada Commission on Ethics

OUR MISSION

To enhance the public's faith and confidence in government and uphold the public trust by **ensuring that public officers and public employees commit themselves to avoiding conflicts** between their private interests and their public duties.

TOP U.S. Scandal:

- <https://youtu.be/WrTf6CaTTc0>

Commission Jurisdiction (2 years)

- ✓ Public Officers
- ✓ Public Employees
- ✓ State Legislators
 - ✓ Exceptions
- ✓ Former Public Officers and Employees

- ✓ Exceptions:
 - ✓ Judicial Officers
 - ✓ Advisory Board Members

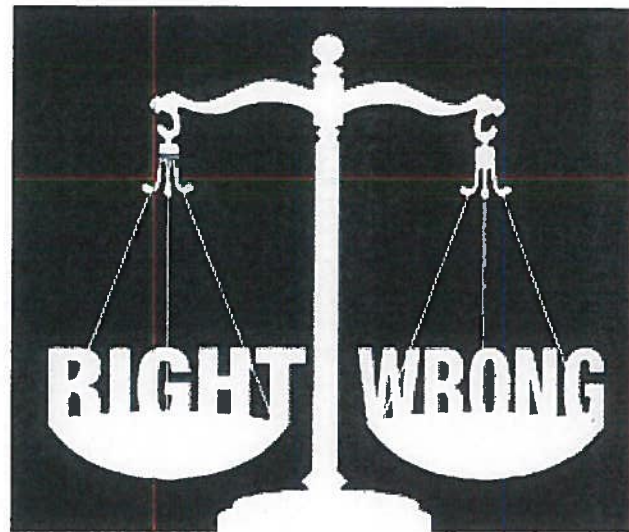


Nevada Commission on Ethics

- 3 Primary Functions:
 - Advisory Opinions (Confidential)
 - Ethics Complaints (Investigation Confidential)
 - Outreach/Education
 - AB 70
 - Exempts Ethics Training from OML
- Acknowledgment of Statutory Ethical Standards Form
 - Appointed: 30 days of appointment/reappointment; January 15 each even-numbered year for appointed officer who doesn't have definite term.
 - Elected: January 15 after General election; 30 days after special election

Advisory Opinions

Any public officer or public employee with questions regarding his or her own past, present or future conduct related to the Ethics in Government Law may request a **confidential advisory opinion** from the Commission. Consideration of these advisory opinions has been statutorily exempted from Nevada's Open Meeting Law.



Ethics Complaints – Filing

Who May File:

1) Any person

- Not an incarcerated person
- Confidential Requester if:
 - Requester works in same agency as Subject; or
 - Bona fide threat of physical harm

2) Commission may initiate

3) Local/Special Ethics Committee

Ethics Law Statutes

- Prohibited conduct

- Misuse of Official Position (decisions/conduct) in conflict with certain Private Interests ...

Private Interests:

- “Pecuniary” (NRS 281A.139)
- “Commitments in a Private Capacity” (NRS 281A.065)
 - Family/Relatives – 3rd Degree of Consanguinity/Affinity
 - Employers
 - Business Relationships
 - Household Members
 - Substantially Similar Relationships
 - Fiduciary Positions – Nonprofit Boards of Directors

PROHIBITED CONDUCT

GIFTS...



(Improper Influence)

NRS 281A.400(1)

Scandal - Blagovevich:

- <https://youtu.be/NnBN9DyOgrs>

PROHIBITED CONDUCT

- IMPROPER USE OF POSITION
 - Unwarranted Benefits



NRS 281A.400(2)

Scandal – Bridgegate:

- <https://youtu.be/Pk8pa85awQI>

PROHIBITED CONDUCT

■ IMPROPER USE OF POSITION

Improper Contracts/Employment
(Negotiating/Entering)

New Limitations –
SB 129 (2019)
- Contracts with agency



NRS 281A.400(3,10); 281A.430

PROHIBITED CONDUCT

- IMPROPER USE OF POSITION

Additional Compensation – Private Source



NRS 281A.400(4)

PROHIBITED CONDUCT

■ IMPROPER USE OF POSITION

Using/Suppressing Non-public Government Information

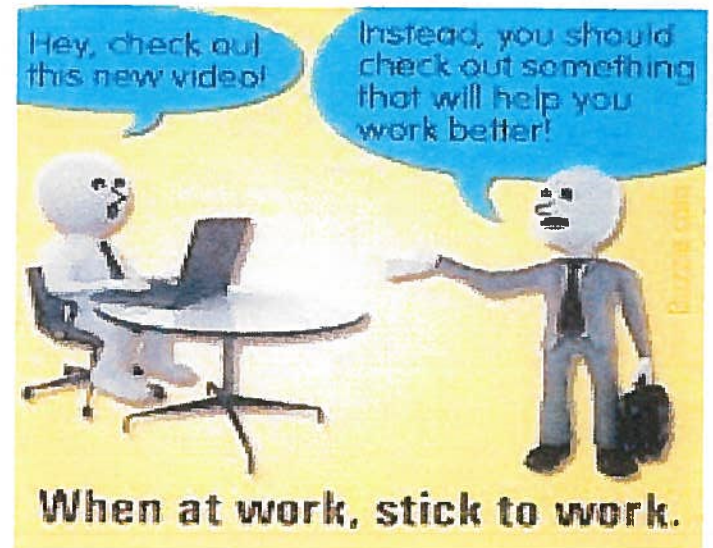


NRS 281A.400(5,6)

PROHIBITED CONDUCT

■ MISUSE GOVERNMENT RESOURCES

Limited Use Exceptions



NRS 281A.400(7)

Scandal - Stolen Time:

<https://youtu.be/xjyC5pv-hGc>

Scandal: IRS Spending/Gifts

- <https://youtu.be/0QqPwoU7ic4>

PROHIBITED CONDUCT

■ IMPROPER USE OF POSITION

Influencing Subordinate – Personal Purpose



NRS 281A.400(9)

PROHIBITED CONDUCT

Honoraria for performing your public duty.



Causing a governmental entity to make an expenditure to support or oppose a ballot question or candidate (during period between candidate filing and election).

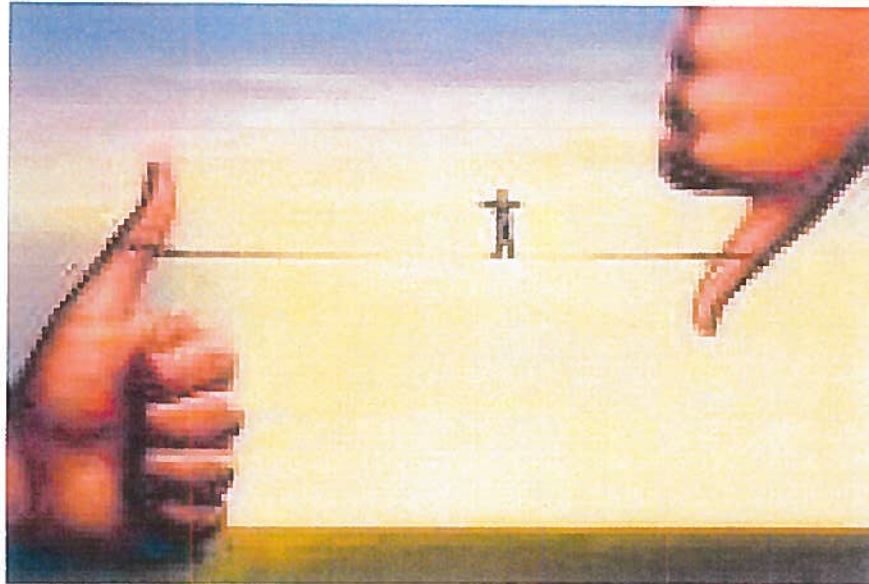


“Cooling-Off” Prohibitions

- One-year cooling off period to seek or accept employment or certain private representations after leaving public service (certain exceptions)
- NRS 281A.550(3) – Prohibits Executive Branch officers/employees of State Government from employment by regulated business/industry
- NRS 281A.550(5) – Prohibits certain public officer/employee from employment with vendors of agency. (State/Local)
- NRS 281A.410 – Prohibits any public officer/employee from representing or counseling private persons/entities on issues that were before the agency.
- Relief may be granted from the strict application of NRS 281A.550(3) and (5). (NRS 281A.550(6))

Disclosure and Abstention for Public Officers and Employees

Walking the Disclosure & Abstention tightrope



Disclosures

- **Disclosure** is mandatory for any interest created by:
 - ✓ A gift or loan
 - ✓ A **substantial*** pecuniary interest
 - ✓ A “commitment in a private capacity”
 - ✓ Representation of private client
- **Disclosure** must be made at the time the matter is considered.
- **Sufficient** to Inform Public – Nature and Scope

NRS 281A.420(1)

Disclosure – Public Employees

- To supervisory head of organization
- Sufficient to inform public



Voting & Abstention

Abstention is **required only** in clear cases where the independence of judgment of a reasonable person in the public officer's situation would be materially affected.

This determination should be made by the public officer and explained **on the record**.

Voting & Abstention

- Voting is presumed permissible **if the resulting benefit/detriment to the public officer (or committed person) is no greater than the benefit/detriment to anyone else affected by the matter.**

SAFE HARBOR PROVISIONS

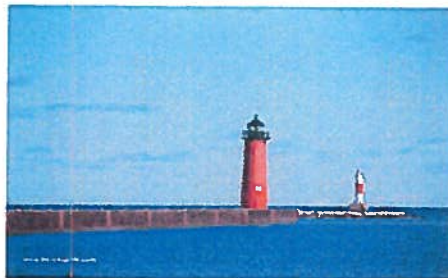
No willful violation **IF**:

(a) The public officer or employee relied in **good faith** upon the **advice of the legal counsel** retained by his or her the public body, agency or employer:

and

(b) The legal advice was:

- Provided before conduct; and
- Not contrary to prior published opinions on Commission website.



Immunity:

- https://youtu.be/V1Xk_w9PHyE

What Ethics Law is NOT:

- Campaign Finance
- Rude Behavior
- Laziness
- Poor Policy Decisions
- Sexual Harassment
- Discrimination

Office Complainers:

<https://youtu.be/2xbjNwgdidk>

Commission Opinions & Other Resources

- Resources and Opinions of the Nevada Commission on Ethics are indexed on the NCOE website:

www.ethics.nv.gov

Nevada Commission on Ethics

Nevada Commission on Ethics
704 W. Nye Lane, Suite 204
Carson City, NV 89703
775- 687-5469 (Office)
775-687-1279 (Fax)



Yvonne M. Nevarez-Goodson
Executive Director
Direct Line: 775-687-4312

Website: www.ethics.nv.gov
ynevarez@ethics.nv.gov

BEFORE THE NEVADA STATE BOARD OF PHARMACY

| | | |
|--|---|-----------------------|
| NEVADA STATE BOARD OF PHARMACY, |) | CASE NOS. 19-090-CS-S |
| |) | |
| Petitioner, |) | |
| v. |) | STIPULATION AND ORDER |
| |) | |
| CHRISTOPHER NEVAREZ, M.D., |) | |
| Certificate of Registration No. CS19561, |) | |
| |) | |
| Respondents. |) | |
| | / | |

S. Paul Edwards, Esq., prosecuting for the State of Nevada, Nevada State Board of Pharmacy ("Board"), and Respondent CHRISTOPHER NEVAREZ, M.D., Certificate of Registration No. CS19561 ("Dr. Nevarez"), by and through his counsel of record, Maria Nutile of the law firm Nutile Law

HEREBY STIPULATE AND AGREE THAT:

1. The Board has jurisdiction over this matter because at the time of the events alleged herein, Dr. Nevarez held a Controlled Substance Registration, Certificate No. CS19561, issued by the Board.

2. On or about June 12, 2019, Board Staff properly served the *Notice of Intended Action and Accusation* (Accusation) on file in this matter on Dr. Nevarez in compliance with Nevada Revised Statutes (NRS) 233B.127(3) and NRS 639.241.

3. Dr. Nevarez, through his counsel, filed an *Answer and Notice of Defense* with the Board on or about July 5, 2019.

4. Dr. Nevarez is fully aware of his right to seek the advice of counsel in this matter and obtained the advice of counsel prior to signing this Stipulation.

5. Dr. Nevarez is aware of his right to a hearing on the matters alleged in the Accusation, his right to reconsideration, his right to appeal and any and all other rights which

may be accorded to him pursuant to the Nevada Administrative Procedure Act and the Nevada Pharmacy Act.

6. Conditioned on the acceptance of this Stipulation by the Board, and with the exception of the right to challenge any determination that he failed to comply with the provisions of paragraph 10 below, Dr. Nevarez hereby freely and voluntarily waives his right to a hearing, reconsideration, appeal and any and all other rights related to this action that may be accorded to him by the Nevada Administrative Procedure Act and the Nevada Pharmacy Act.

7. The facts and violations alleged in the Accusation are pled with adequate particularity to give Dr. Nevarez notice of the alleged violations.

8. The facts and violations alleged in the Accusation, if proven, are grounds for disciplinary action pursuant to NRS 639.210 and NRS 639.255, *to wit*:

a. By allowing Push IV's Non-practitioner Staff Members to operate Push IV and to use Dr. Nevarez's authority as a practitioner to obtain, access, possess and/or store dangerous drugs when he was not on site, without a proper examination, without direct supervision and before he wrote a patient-specific order, Dr. Nevarez violated, or assisted and abetted Push IV's staff in violating, NRS 454.213(1), NRS 454.316 and/or NRS 454.356.

b. By allowing Push IV's Non-practitioner Staff Members to operate Push IV and to use Dr. Nevarez's authority as a practitioner to obtain, access, possess and/or store dangerous drugs when he was not on site, without a proper examination, without direct supervision and before he wrote a patient-specific order, Dr. Nevarez engaged, or assisted and abetted Push IV's staff to engage, in unprofessional conduct as defined in NAC 639.945(1)(g), (i), and (k).

c. By authorizing Push IV's Non-practitioner Staff Members to use his authority to operate Push IV, to administer a dangerous drug to patients who had not been examined by a practitioner, where he did not have a bona fide therapeutic relationship and for whom he had not diagnosed or determined that a dangerous drug was medically necessary, Dr.

Nevarez violated, and/or aided and abetted Push IV's staff in violating Nevada law, including NRS 454.221(1). He also acted unprofessionally. See NAC 639.945(1)(k) and (o).

d. Board staff hereby withdraws the Fourth Cause of Action alleging violations of NRS 639.233, NRS 639.285 and NAC 639.6915 (purchasing from unlicensed wholesalers).

9. Because of his conduct, Dr. Nevarez's controlled substance registration, Certificate of Registration No. CS19561, is subject to discipline pursuant to NRS 639.210(4) and (12) and/or NRS 639.255.

10. In light of the allegations set forth in the Accusation and the foregoing admissions, and in lieu of other discipline, the Board and Dr. Nevarez stipulate to the following penalties Dr. Nevarez shall:

a. Receive a public letter of reprimand regarding each of the violations set forth in Causes of Action 1 through 3, as stated in the Accusation,

b. Pay a fine of Five Hundred Dollars (\$500.00) per cause of action for each of the three remaining causes of action stated in the Accusation on file herein, for a total fine of One Thousand Dollars (\$1,500.00), related to the violations at issue in this matter.

c. Pay One Thousand Five Hundred Dollars (\$1,500.00) to partially offset the Board's attorney's fees, costs and expenses incurred while investigating and prosecuting this matter.

d. Notify and seek approval from the Board before becoming the medical director of or practicing in any practice in which a substantial portion of the practice is providing injections and/or intravenous (IV) infusions of vitamins or fluids for rehydration. Board Staff has authority to grant such permission after a review and inspection of the practice and its policies and procedures, to the extent necessary as determined by Board Staff at its sole discretion.

e. Comply with all other federal and state laws regarding the possession, control and administration of controlled substances and dangerous drugs.

11. The parties will present this Stipulation and Order to the Board for approval during a hearing at the Board's regularly scheduled meeting on Wednesday, October 4, 2019, in Reno, Nevada.

12. Dr. Nevarez and/or his counsel will appear at the hearing to answer questions from the Board Members and/or Board Staff.

13. The Board Members and Board Staff may discuss and deliberate regarding this Stipulation and the underlying case during the hearing even if Dr. Nevarez or his counsel are not present at the meeting.

14. The Board has discretion to accept this Stipulation, but it is not obligated to do so.

15. If the Board rejects all or any part this Stipulation, and unless the parties reach an alternative agreement on the record during the hearing, the parties agree that a full hearing on the merits of this matter may be conducted by the Board. That hearing shall occur at the Board's October 2019 Board Meeting in Las Vegas, Nevada.

16. The terms and admissions stated herein may not be used or referred to if the Board conducts a full hearing on the merits of this matter.

17. Upon approval of this Stipulation by the Board, Respondent shall pay the fines agreed to herein by *cashier's check or certified check or money order* made payable to "State of Nevada, Office of the Treasurer," to be received by the Board's Reno office located 985 Damonte Ranch Parkway, Suite 206, Reno, Nevada, 90521, within thirty (30) days of the effective date of the Board's Order.

18. Respondent shall pay the attorney's fees and costs agreed to herein by *cashier's check or certified check or money order* made payable to "Nevada State Board of Pharmacy," to be received by the Board's Reno office located 985 Damonte Ranch Parkway, Suite 206, Reno, Nevada, 90521, within thirty (30) days of the effective date of the Board's Order.

19. In the event Dr. Nevarez is unable to pay the fines and attorney's fees and costs stated above within the 30-day time frame as ordered, the Board hereby grants Board Staff authority to establish a payment plan with Dr. Nevarez that will allow him to pay through

installments over a period of up to twelve (12) months from the effective date of this Stipulation and Order.

20. Any failure by Respondent to satisfy the obligations stated herein may result in additional discipline, up to and including suspension or revocation of Respondent's registration.

21. Nothing in this Stipulation and the attached Order shall be deemed in any way to limit, impair or alter any potential discipline or order by any other federal or state entity.

22. Nothing in this Stipulation and the attached Order in any way limits or impairs the Board and Board Staff's authority to conduct investigations, inspect and review records as provided in NRS Chapters 453, 454 and 639, and NAC Chapters 453, 454 and 639, or otherwise provided in the NRS or NAC.

Respondent Dr. Nevarez has fully considered the allegations and charges contained in the *Notice of Intended Action and Accusation* on file in this matter and the terms of the foregoing *Stipulation* and has freely and voluntarily agreed to the terms set forth herein, and waived certain rights, as stated herein.

AGREED:

Signed this ____ day of September 2019

Signed this ____ day of September 2019

CHRISTOPHER NEVAREZ, M.D.,
Certificate of Registration No. CS19561

S. PAUL EDWARDS, ESQ.
General Counsel
Nevada State Board of Pharmacy

DECISION AND ORDER

The Nevada State Board of Pharmacy hereby adopts the foregoing Stipulation as its decision as to Respondent Christopher Nevarez, M.D., Certificate of Registration Nos. CS19561, in Case No. 19-090-CS-S, and hereby orders that the terms of the foregoing Stipulation be made effective upon execution below.

Dated

Jason Penrod, President
Nevada State Board of Pharmacy

BEFORE THE NEVADA STATE BOARD OF PHARMACY

| | | |
|---|---|------------------------------|
| NEVADA STATE BOARD OF PHARMACY, |) | CASE NOS. 17-100-CS-S |
| |) | |
| Petitioner, |) | |
| v. |) | STIPULATION AND ORDER |
| |) | |
| DOUGLAS ROSS, M.D., |) | |
| Certificate of Registration No. CS10138, |) | |
| |) | |
| Respondents. |) | |
| |) | |
| |) | |
| |) | |
| | / | |

S. Paul Edwards, Esq., prosecuting for the State of Nevada, Nevada State Board of Pharmacy ("Board"), and Respondent DOUGLAS ROSS, M.D., Certificate of Registration No. CS10138 ("Dr. Ross"), by and through his counsel of record, Maria Nutile of the law firm Nutile Law

HEREBY STIPULATE AND AGREE THAT:

1. The Board has jurisdiction over this matter because at the time of the events alleged herein, Dr. Ross held a Controlled Substance Registration, Certificate No. CS10138, issued by the Board.
2. On or about June 13, 2019, Board Staff properly served the *Notice of Intended Action and Accusation* (Accusation) on file in this matter on Dr. Ross in compliance with Nevada Revised Statutes (NRS) 233B.127(3) and NRS 639.241.
3. Dr. Ross, through his counsel, filed an *Answer and Notice of Defense* with the Board on or about July 8, 2019.
4. Dr. Ross is fully aware of his right to seek the advice of counsel in this matter and obtained the advice of counsel prior to signing this Stipulation.

5. Dr. Ross is aware of his right to a hearing on the matters alleged in the Accusation, his right to reconsideration, his right to appeal and any and all other rights which may be accorded to him pursuant to the Nevada Administrative Procedure Act and the Nevada Pharmacy Act.

6. Conditioned on the acceptance of this Stipulation by the Board, and with the exception of the right to challenge any determination that he failed to comply with the provisions of paragraph 10 below, Dr. Ross hereby freely and voluntarily waives his right to a hearing, reconsideration, appeal and any and all other rights related to this action that may be accorded to him by the Nevada Administrative Procedure Act and the Nevada Pharmacy Act.

7. The facts and violations alleged in the Accusation are pled with adequate particularity to give Dr. Ross notice of the alleged violations.

8. The facts and violations alleged in the Accusation, if proven, are grounds for disciplinary action pursuant to NRS 639.210 and NRS 639.255, *to wit*:

a. By allowing Infuze Wellness Center's Non-practitioner Staff Members to operate Infuze Wellness Center and to use Dr. Ross's authority as a practitioner to obtain, access, possess and/or store dangerous drugs when he was not on site, without a proper examination, without direct supervision and before he wrote a patient-specific order, Dr. Ross violated, or assisted and abetted Infuze Wellness Center's staff in violating, NRS 454.213(1), NRS 454.316 and/or NRS 454.356.

b. By allowing Infuze Wellness Center's Non-practitioner Staff Members to operate Infuze Wellness Center and to use Dr. Ross's authority as a practitioner to obtain, access, possess and/or store dangerous drugs when he was not on site, without a proper examination, without direct supervision and before he wrote a patient-specific order, Dr. Ross engaged, or assisted and abetted Infuze Wellness Center's staff to engage, in unprofessional conduct as defined in NAC 639.945(1)(g), (i), and (k), and

c. By authorizing Infuze Wellness Center's Non-practitioner Staff Members to use his authority to operate Infuze Wellness Center, to administer a dangerous drug to patients

who had not been examined by a practitioner, where he did not have a bona fide therapeutic relationship and for whom he had not diagnosed or determined that a dangerous drug was medically necessary, Dr. Ross violated, and/or aided and abetted Infuze Wellness Center's staff in violating Nevada law, including NRS 454.221(1). He also acted unprofessionally. See NAC 639.945(1)(k) and (o).

9. Because of his conduct, Dr. Ross's controlled substance registration, Certificate of Registration No. CS10138, is subject to discipline pursuant to NRS 639.210(4) and (12) and/or NRS 639.255.

10. In light of the allegations set forth in the Accusation and the foregoing admissions, and in lieu of other discipline, the Board and Dr. Ross stipulate to the following penalties. Dr. Ross shall:

a. Receive a public letter of reprimand regarding each of the violations set forth in Causes of Action 1 through 3, as stated in the Accusation,

b. Pay a fine of Five Hundred Dollars (\$500.00) per cause of action for each of the three causes of action stated in the Accusation on file herein, for a total fine of One Thousand Five Hundred Dollars (\$1,500.00), related to the violations at issue in this matter.

c. Pay One Thousand Five Hundred Dollars (\$1,500.00) to partially offset the Board's attorney's fees, costs and expenses incurred while investigating and prosecuting this matter.

d. Immediately establish and put into practice policies and procedures within his offices/clinics to ensure that:

i. A bona fide relationship between the patient and the practitioner ordering a controlled substance or dangerous drug exists before any controlled substance or dangerous drug is ordered or administered,

ii. The practitioner who examines the patient and orders the controlled substance or dangerous drug maintains exclusive possession and control of the

medication until after he or she creates a patient-specific and medication-specific order for the administration of the medication,

iii. To the extent a controlled substance or dangerous drug called for in an order is put into the possession and control of anyone other than a practitioner, the ordering practitioner personally gives possession and control of the controlled substance or dangerous drug to the non-practitioner and only gives the non-practitioner the specific medication in the specific quantity needed to fill the order, and

e. Comply with all other federal and state laws regarding the possession, control and administration of controlled substances and dangerous drugs.

f. Additionally, each of Dr. Ross's offices/clinics may be subject to quarterly unannounced inspections by Board Staff at Dr. Ross's expense until Board Staff is satisfied that the clinic is in compliance with the law. The cost for each inspection shall not exceed Five Hundred Dollars (\$500.00).

11. The parties will present this Stipulation and Order to the Board for approval during a hearing at the Board's regularly scheduled meeting on Wednesday, September 4, 2019, in Reno, Nevada.

12. Dr. Ross and/or his counsel will appear at the hearing to answer questions from the Board Members and/or Board Staff.

13. The Board Members and Board Staff may discuss and deliberate regarding this Stipulation and the underlying case during the hearing even if Dr. Ross or his counsel are not present at the meeting.

14. The Board has discretion to accept this Stipulation, but it is not obligated to do so.

15. If the Board rejects all or any part this Stipulation, and unless the parties reach an alternative agreement on the record during the hearing, the parties agree that a full hearing on the merits of this matter may be conducted by the Board. That hearing shall occur at the Board's October 2019 Board Meeting in Las Vegas, Nevada.

16. The terms and admissions stated herein may not be used or referred to if the Board conducts a full hearing on the merits of this matter.

17. Upon approval of this Stipulation by the Board, Respondent shall pay the fines agreed to herein by *cashier's check or certified check or money order* made payable to "State of Nevada, Office of the Treasurer," to be received by the Board's Reno office located 985 Damonte Ranch Parkway, Suite 206, Reno, Nevada, 90521, within thirty (30) days of the effective date of the Board's Order.

18. Respondent shall pay the attorney's fees and costs agreed to herein by *cashier's check or certified check or money order* made payable to "Nevada State Board of Pharmacy," to be received by the Board's Reno office located 985 Damonte Ranch Parkway, Suite 206, Reno, Nevada, 90521, within thirty (30) days of the effective date of the Board's Order.

19. In the event Dr. Ross is unable to pay the fines and attorney's fees and costs stated above within the 30-day time frame as ordered, the Board hereby grants Board Staff authority to establish a payment plan with Dr. Ross that will allow him to pay through installments over a period of up to twelve (12) months from the effective date of this Stipulation and Order.

20. Any failure by Respondent to satisfy the obligations stated herein may result in additional discipline, up to and including suspension or revocation of Respondent's registration.

21. Nothing in this Stipulation and the attached Order shall be deemed in any way to limit, impair or alter any potential discipline or order by any other federal or state entity.

22. Nothing in this Stipulation and the attached Order in any way limits or impairs the Board and Board Staff's authority to conduct investigations, inspect and review records as provided in NRS Chapters 453, 454 and 639, and NAC Chapters 453, 454 and 639, or otherwise provided in the NRS or NAC.

[SIGNATURES ON NEXT PAGE]

Respondent Dr. Ross has fully considered the allegations and charges contained in the *Notice of Intended Action and Accusation* on file in this matter and the terms of the foregoing *Stipulation* and has freely and voluntarily agreed to the terms set forth herein, and waived certain rights, as stated herein.

AGREED:

Signed this ____ day of September 2019

Signed this ____ day of September 2019

DOUGLAS ROSS, M.D.,
Certificate of Registration No. CS10138

S. PAUL EDWARDS, ESQ.
General Counsel
Nevada State Board of Pharmacy

DECISION AND ORDER

The Nevada State Board of Pharmacy hereby adopts the foregoing Stipulation as its decision as to Respondent Douglas Ross, M.D., Certificate of Registration Nos. CS10138, in Case No. 17-100-CS-S, and hereby orders that the terms of the foregoing Stipulation be made effective upon execution below.

Dated

Jason Penrod, President
Nevada State Board of Pharmacy

ORIGINAL

FILED

SEP - 3 2019

NEVADA STATE BOARD
OF PHARMACY

1 **DAVID R. HOUSTON, ESQ.**
2 Nevada Bar No. 2131
3 **LAW OFFICE OF DAVID R. HOUSTON**
4 A Professional Law Corporation
5 432 Court Street
6 Reno, Nevada 89501
7 Telephone: 775.786.4188
8 Facsimile: 775.786.5573
9 *Attorney for Defendant*

10 **BEFORE THE NEVADA STATE BOARD OF PHARMACY**

11 NEVADA STATE BOARD OF PHARMACY,) **CASE NO. 19-083-CS-N**
12)
13 Petitioner,)
14 vs.) **ANSWER AND NOTICE OF DEFENSE**
15)
16 ERIC MATH, M.D.) **Date of Hearing: Sept. 4, 2019**
17 Certificate of Registration No. CS04598,)
18) **Time of Hearing: 9:00 a.m.**
19 Respondent,)
20 /

21 Respondent, ERIC MATH, MD (hereinafter "Dr. Math"), by and through his attorney,
22 DAVID R. HOUSTON, ESQ., of THE LAW OFFICE OF DAVID R. HOUSTON, in answer to
23 the Notice of Intended Action and Accusation filed in the above-entitled matter before the
24 Nevada State Board of Pharmacy declares:

- 25 1. That he is currently under indictment in the United States District Court for the District of
26 Nevada in the case of United States of America vs. Myron Motley, Eric Math, M.D.,
27 Michael Kwoka, Michael Slater, Joseph Jeannette, Ivy Elliott, and Alesia Sampson, Case
28 No.: 3:19-CR-00026-LRH-CBC (hereinafter "the federal case").
- 29 2. That the facts and circumstances alleged in the Nevada State Board of Pharmacy Notice
30 of Intended Action and Accusation are the same or are substantially similar to the facts
31 and circumstances alleged by the United States Attorney's Office in the federal case.
- 32 3. That providing any specific factual response to the Notice of Intended Action and
33 Accusation would require Dr. Math to make statements that could be used against him in
34 proceedings in the federal case.

- 1 4. The privilege against self-incrimination embodied in the Fifth Amendment to the United
2 States Constitution, applicable to the states through the Fourteenth Amendment to the
3 United States Constitution, can be “claimed in any proceeding, be it criminal or civil,
4 administrative or judicial, investigatory or adjudicatory... it protects any disclosures
5 which the witness may reasonably apprehend could be used in a criminal prosecution or
6 which could lead to other evidence that might be so used”. In re Gault, 387 U.S. 1,47-48
7 (1967), quoting Murphy v. Waterfront Comm’n, 378 U.S. 52, 94 (1964) (emphasis added
8 in original).
- 9 5. “[T]he availability of privilege does not turn upon the type of proceeding in which its
10 protection is invoked, but upon the nature of the statement or admission and the exposure
11 which it invites. The privilege may, for example, be claimed in a civil or administrative
12 proceeding, if the statement is or may be inculpatory”. In re Gault, 387 U.S. 1, 48 (1967)
13 (emphasis added).
- 14 6. Dr. Math cannot be compelled to answer the specific allegations set forth in the Notice of
15 Intended Action and Accusation.
- 16 7. Dr. Math’s refusal to answer the allegations is in no way an admission of any of the
17 allegations.

18 //

19 //

20 //

21 //

22 //

23 //

24 //

25 //

26 //

27 //

28

1 **REQUEST FOR STAY OF PROCEEDINGS**

2 Based upon the foregoing, Dr. Math hereby requests that the proceedings in the Nevada
3 State Board of Pharmacy be stayed until such time as the federal case is resolved. Dr. Math
4 understands that his Certificate of Registration No. CS04598 with the Nevada State Board of
5 Pharmacy is suspended until the allegations set forth in the Accusation are fully addressed and
6 adjudicated by the Board.

7 DATED this 3rd day of 3 September 2019.

8 
9
10 David R. Houston, Esq.

11 432 Court Street
12 Address

13 Reno, Nevada
14 City, State

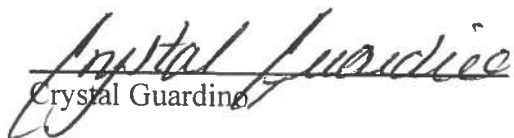
15 89501 775-786-4188
16 Zip Code Telephone

17 **CERTIFICATE OF SERVICE**

18 The undersigned does hereby affirm that I am an Employee of the Law Office of David
19 R. Houston and that on this date, I caused to be delivered via hand delivery a true and correct
20 copy of the within document, to the below-named:

21 Nevada State Board of Pharmacy
22 985 Damonte Ranch Parkway, Suite 206
23 Reno, NV 89521

24 DATED this 3rd day of September 2019.

25 
26 Crystal Guardino
27
28

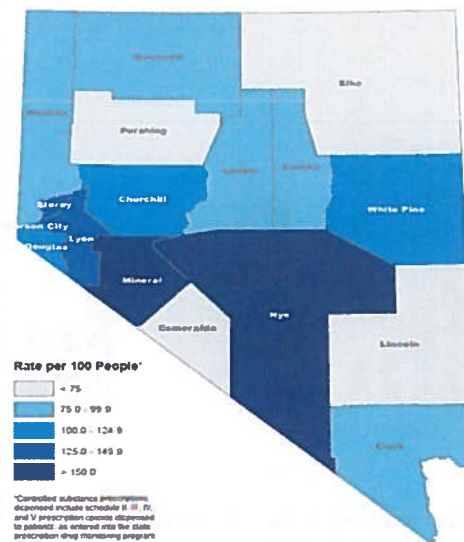


Nevada's Evolving Opioid Crisis: Impact of AB 474

1

Opioid Prescription Rates 2016

Opioid Pain Killer Prescription Rates*, Nevada, 2016

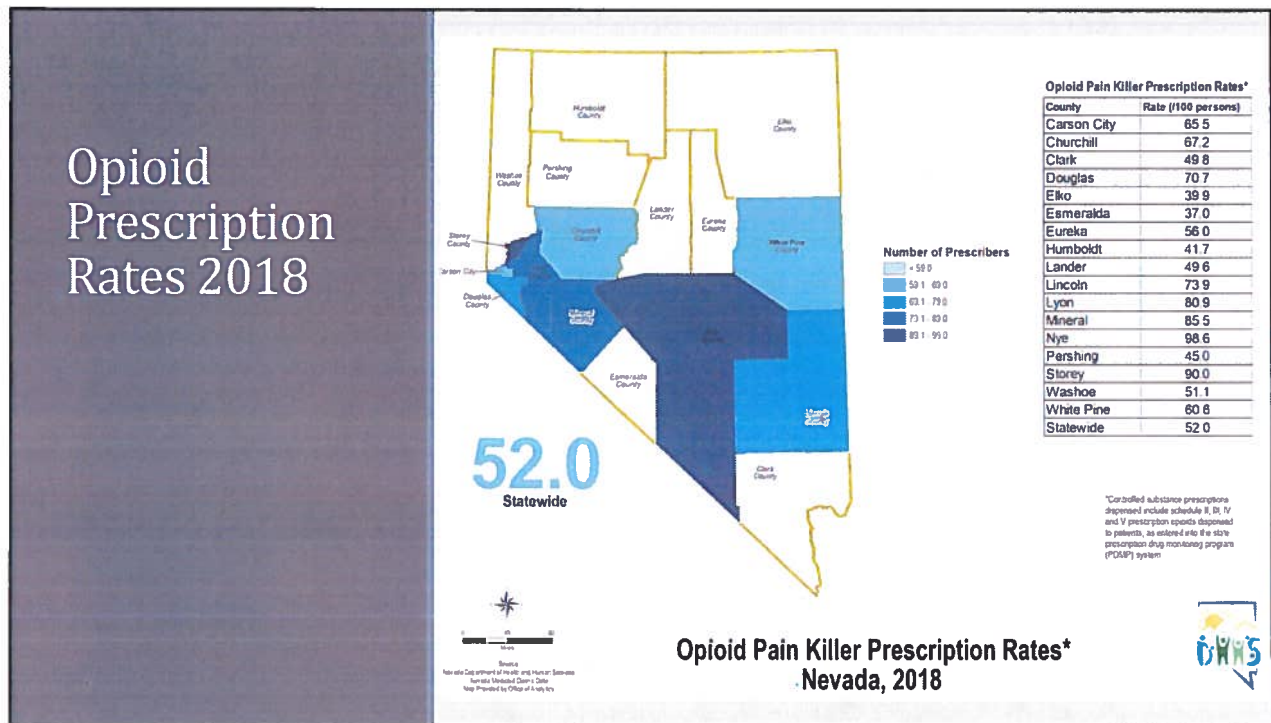


Opioid Painkiller Prescribing Rates Per 100, by County, 2016

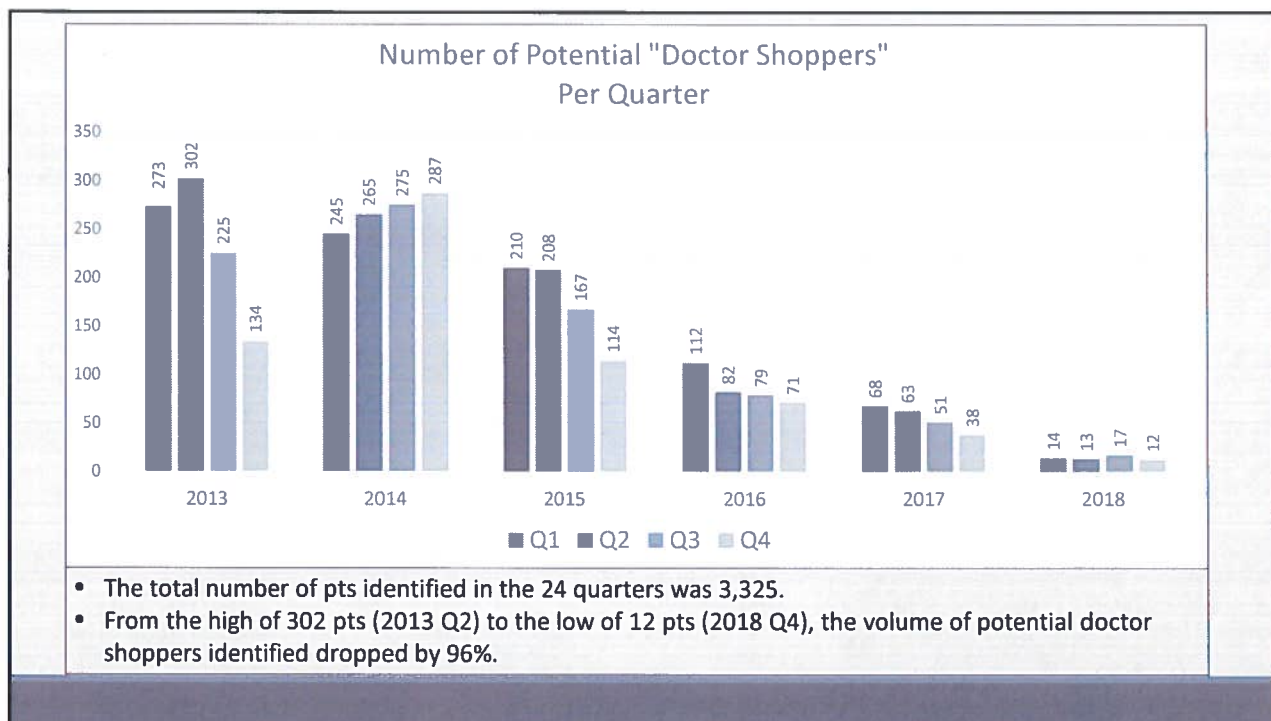
| County | Rate |
|-------------|-------|
| Carson City | 105.4 |
| Churchill | 106.8 |
| Clark | 84.3 |
| Douglas | 102.0 |
| Elko | 71.7 |
| Esmeralda | 72.5 |
| Eureka | 92.7 |
| Humboldt | 75.5 |
| Lander | 85.2 |
| Lincoln | 60.7 |
| Lyon | 130.0 |
| Mineral | 158.2 |
| Nye | 155.6 |
| Pershing | 69.5 |
| Storey | 146.9 |
| Washoe | 87.5 |
| White Pine | 99.9 |
| Statewide | 87.5 |

(Sources: Office of Public Health Informatics and Epidemiology; Prescription Drug Monitoring Program)

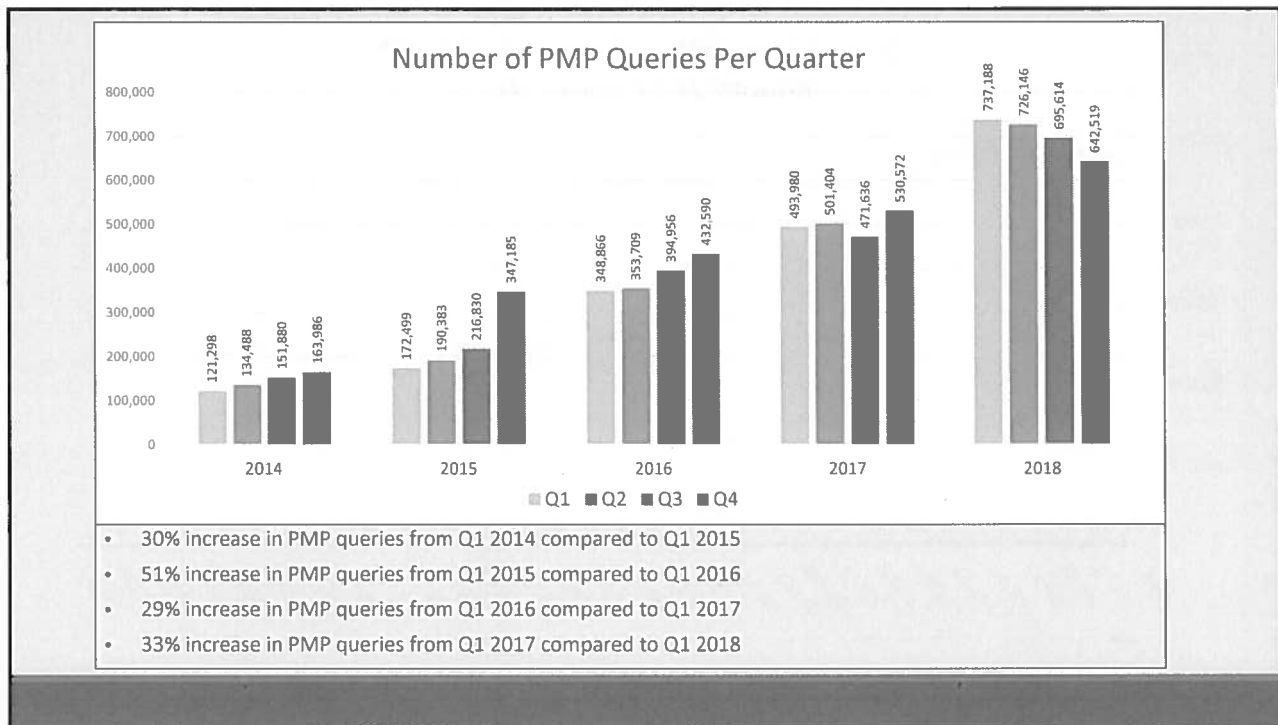
2



3




4



5

Prescription Drug Monitoring Program Data, January 2017 – December 2018



39% decrease in the rate of opioid prescriptions per 100 Nevada residents.

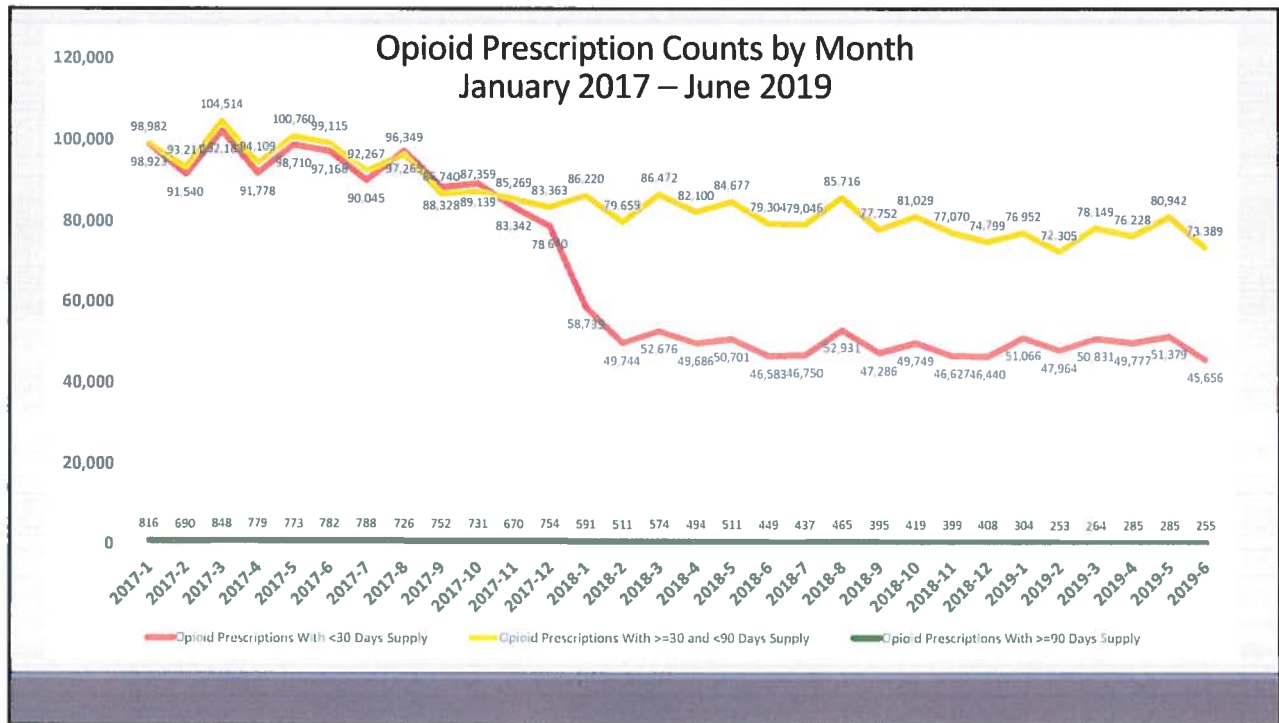
- Opioid prescriptions with less than a **30 days supply** decreased by **53%**.
- Opioid prescriptions with greater than or equal to a **30 days supply and less than a 90 days supply** decreased by **24%**.
- Opioid prescriptions with greater than or equal to a **90 days supply** decreased by **50%**.

All Nevada counties observed a decrease in both the number of and rate of opioid prescriptions by month, with the decrease in rates ranging from 25% (Lincoln) to 56% (Humboldt).

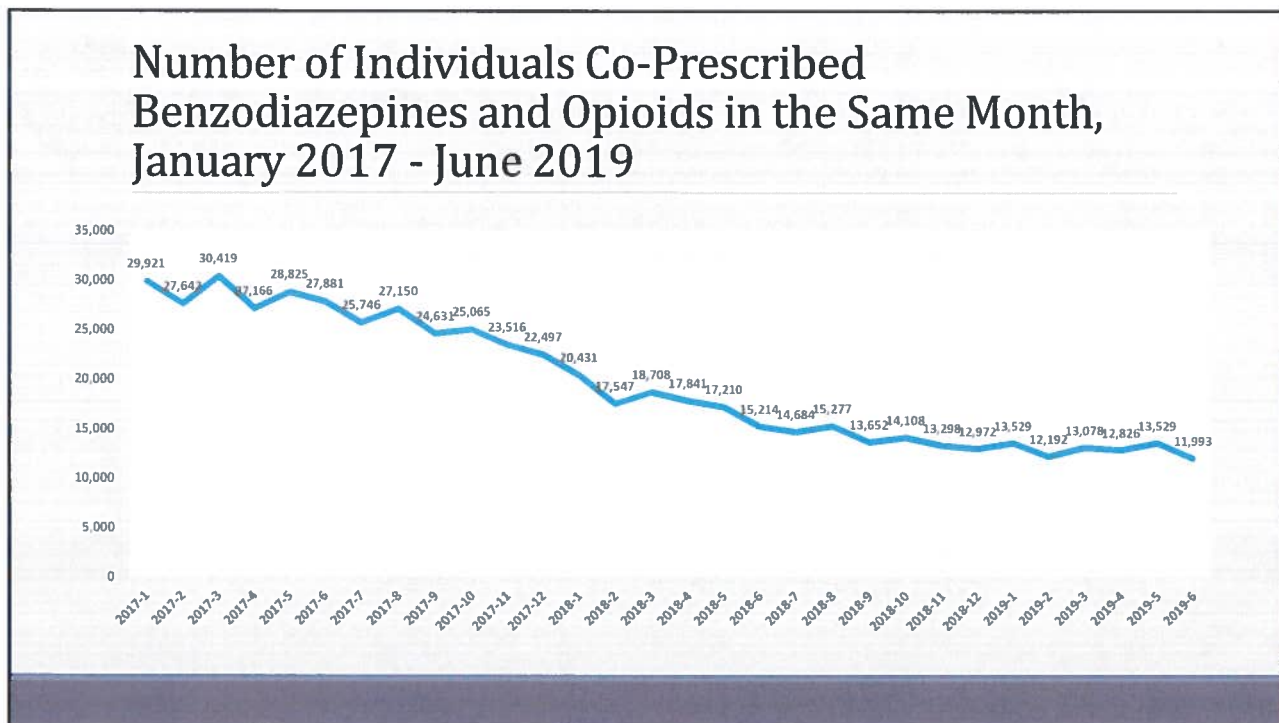
- The number of individuals who were co-prescribed Opioid and Benzodiazepines during the same month also decreased significantly, by 54% in Nevada overall.

DHHS Office of Analytics Data Source: Prescription Drug Monitoring Program (PDMP; 2018)
[http://dhhs.nv.gov/uploadedFiles/dhhsnv.gov/Content/Programs/Office_of_Analytics/Images/Nevada%20PDMP%20Surveillance,%20Pre%20and%20Post%20AB47%20Jan%202017%20-%20Sep%202018\(1\).pdf](http://dhhs.nv.gov/uploadedFiles/dhhsnv.gov/Content/Programs/Office_of_Analytics/Images/Nevada%20PDMP%20Surveillance,%20Pre%20and%20Post%20AB47%20Jan%202017%20-%20Sep%202018(1).pdf)

6



7

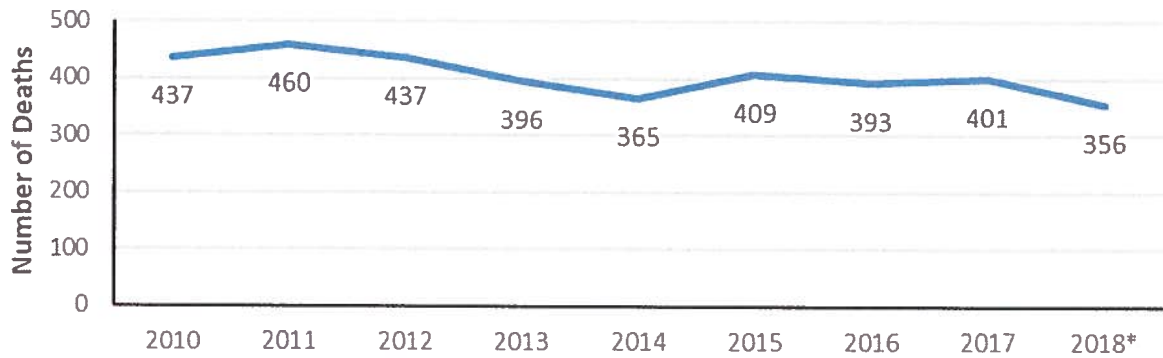


8

Nevada's Opioid Overdose Deaths



Opioid-Related Overdose Deaths, State of Nevada Residents, 2010-2018*



*Data for 2018 are preliminary



THE STATE
of **ALASKA**

GOVERNOR MICHAEL J. DUNLEAVY

Department of Commerce, Community,
and Economic Development

DIVISION OF CORPORATIONS, BUSINESS AND
PROFESSIONAL LICENSING
Juneau Office

P.O. Box 110806
Juneau, AK 99811-0806
Main: 907.465.2550
Toll free fax: 907.465.2974

January 23, 2019

Dear Pharmacists,

The Board of Pharmacy has had an influx of communication concerning patients not able to get controlled substance prescriptions filled for various reasons, even when signs of forgery or fraudulence were not presented.

As a result of the increased "refusals to fill," the board is issuing the following guidance and reminders regarding the practice of pharmacy and dispensing of control substances:

1. Pharmacists must use reasonable knowledge, skill, and professional judgment when evaluating whether to fill a prescription. Extreme caution should be used when deciding not to fill a prescription. A patient who suddenly discontinues a chronic medication may experience negative health consequences;
2. Part of being a licensed healthcare professional is that you put the patient first. This means that if a pharmacist has any concern regarding a prescription, they should attempt to have a professional conversation with the practitioner to resolve those concerns and not simply refuse the prescription. Being a healthcare professional also means that you use your medication expertise during that dialogue in offering advice on potential alternatives, changes in the prescription strength, directions etc. Simply refusing to fill a prescription without trying to resolve the concern may call into question the knowledge, skill or judgment of the pharmacist and may be deemed unprofessional conduct;
3. Controlled substance prescriptions are not a "bartering" mechanism. In other words, a pharmacist should not tell a patient that they have refused to fill a prescription and then explain that if they go to a pain specialist to get the same prescription then they will reconsider filling it. Again, this may call into question the knowledge, skill or judgment of the pharmacist;
4. Yes, there is an opioid crisis. However, this should in no way alter our professional approach to treatment of patients in end-of-life or palliative care situations. Again, the fundamentals of using our professional judgment, skill and knowledge of treatments plays an integral role in who we are as professionals. Refusing to fill prescriptions for these patients without a solid medical reason may call into question whether the pharmacist is informed of current professional practice in the treatment of these medical cases.
5. If a prescription is refused, there should be sound professional reasons for doing so. Each patient is a unique medical case and should be treated independently as such. Making blanket decisions regarding dispensing of controlled substances may call into question the motivation of the pharmacist and how they are using their knowledge, skill or judgment to best serve the public.

As a professional reminder, failing to practice pharmacy using reasonable knowledge, skill, competence, and safety for the public may result in disciplinary actions under Alaska statute and regulation. These laws are:

AS 08.80.261 DISCIPLINARY ACTIONS

(a) The board may deny a license to an applicant or, after a hearing, impose a disciplinary sanction authorized under AS 08.01.075 on a person licensed under this chapter when the board finds that the applicant or licensee, as applicable, ...

(7) is incapable of engaging in the practice of pharmacy with reasonable skill, competence, and safety for the public because of

(A) professional incompetence;

(B) failure to keep informed of or use current professional theories or practices; or ...

(E) other factors determined by the board;

(14) engaged in unprofessional conduct, as defined in regulations of the board.

12 AAC 52.920 DISCIPLINARY GUIDELINES

(a) In addition to acts specified in AS 08.80 or elsewhere in this chapter, each of the following constitutes engaging in unprofessional conduct and is a basis for the imposition of disciplinary sanctions under AS 08.01.075; ...

(15) failing to use reasonable knowledge, skills, or judgment in the practice of pharmacy;

(b) The board will, in its discretion, revoke a license if the licensee ...

(4) intentionally or negligently engages in conduct that results in a significant risk to the health or safety of a patient or injury to a patient;

(5) is professionally incompetent if the incompetence results in a significant risk of injury to a patient.

(c) The board will, in its discretion, suspend a license for up to two years followed by probation of not less than two years if the licensee ...

(2) is professionally incompetent if the incompetence results in the public health, safety, or welfare being placed at risk.

We all acknowledge that Alaska is in the midst of an opioid crisis. While there are published guidelines and literature to assist all healthcare professionals in up to date approaches and recommendations for medical treatments per diagnosis, do not confuse guidelines with law; they are not the same thing.

Pharmacists have an obligation and responsibility under Title 21 Code of Federal Regulations 1306.04(a), and a pharmacist may use professional judgment to refuse filling a prescription. However, how an individual pharmacist approaches that particular situation is unique and can be complex. The Board of Pharmacy does not recommend refusing prescriptions without first trying to resolve your concerns with the prescribing practitioner as the primary member of the healthcare team. Patients may also serve as a basic source of information to understand some aspects of their treatment; do not rule them out in your dialogue.

If in doubt, we always recommend partnering with the prescribing practitioner. We are all licensed healthcare professionals and have a duty to use our knowledge, skill, and judgment to improve patient outcomes and keep them safe.

Professionally,



Richard Holt, BS Pharm, PharmD, MBA
Chair, Alaska Board of Pharmacy



NATIONAL ASSOCIATION OF
CHAIN DRUG STORES

September 5, 2019

Dave Wuest
Executive Secretary
Nevada Board of Pharmacy
985 Damonte Ranch Parkway, Suite 206
Reno, NV 89521

By Email: dwuest@pharmacy.nv.gov & pharmacy@pharmacy.nv.gov

Dear Mr. Wuest:

On behalf of our members operating in Nevada, the National Association of Chain Drug Stores (NACDS), we would like to highly recommend that the Board of Pharmacy either significantly increase or totally eliminate the pharmacist to technician ratio.

Pharmacy technicians are integral to the delivery of pharmacy care services and support pharmacists in numerous capacities. Technician duties are a subset of pharmacist duties and are limited to non-judgmental tasks. Furthermore, technicians always work under the supervision of a pharmacist. As training programs have improved and states have moved to recognize pharmacy technicians as paraprofessionals through registration and licensure, pharmacists have been able to delegate more duties and responsibilities to technicians.

Technician ratios are antiquated and should be eliminated. Given the growing demand for pharmacist-provided patient care services in community pharmacies, there is a corresponding need to deploy pharmacy technicians for administrative and non-judgmental duties. Furthermore, elimination of technician to pharmacist ratios will enable pharmacists to focus more on counseling patients, performing MTM, providing disease management programs, engaging in other important patient care services, and collaborating with other health care professionals, thus integrating more fully in direct patient care. These services also help patients better adhere to their medication regimens and ultimately serve to improve their health and wellness and reduce our nation's health care costs.

Ratios are arbitrary.

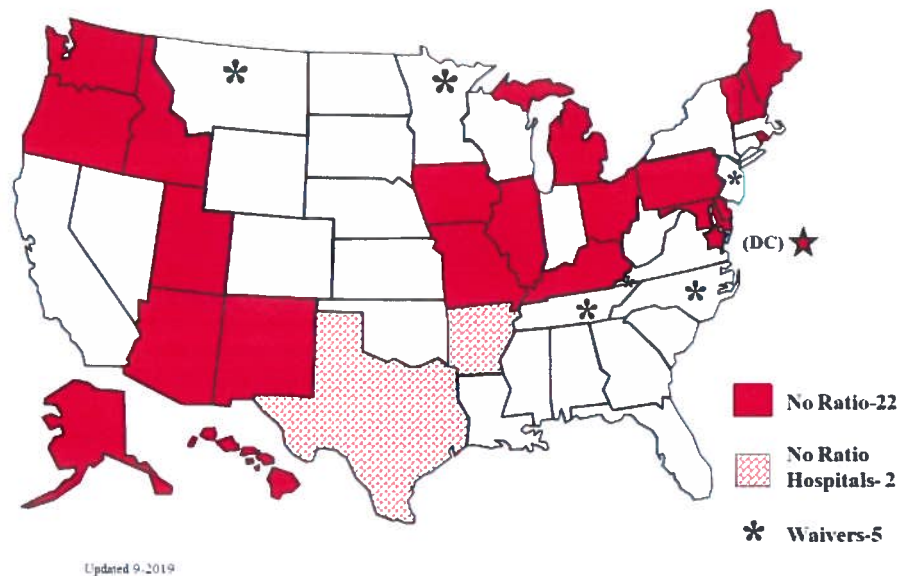
Pharmacists are professionals capable of managing their pharmacies. Dictating a technician ratio is an antiquated policy in the present pharmacy practice environment. Arbitrary ratios prevent pharmacies from maximizing use of pharmacy technicians to provide a broader set of patient care services to the public. The Boards of Pharmacy in more than 21 states and the District of Columbia have over the years relaxed or removed restrictive ratios to allow for optimal use of pharmacy

NACDS Regional Office

1560 East Southlake Boulevard, Suite 230 • Southlake, TX 76092 • 817.442.1155 • www.NACDS.org

technicians. Notably, the National Association of Boards of Pharmacy (NABP) has long supported the complete elimination of the pharmacist to technician ratio.

NO Technician-to-Pharmacist Ratio



Patient Safety is Paramount

The mission of this Board, and every other Board of Pharmacy across the country is fundamentally the same... *to protect public health and patient safety.*

The Nevada State Board of Pharmacy Mission Statement:

In regulating the practice of pharmacy, The Nevada State Board of Pharmacy has a duty to carry out and enforce the provisions of Nevada law to protect the health, safety and welfare of the public.

Current and former Board of Pharmacy Executive Directors and Board Members, in states that never had a ratio, have eliminated the ratio, or have adopted higher ratios, provided more than three dozen detailed testimonials reflecting on their experiences. These factual statements provide the real story on Board deliberations focused on ensuring that patient safety and patient care were not compromised.

Testimonials

“I have been a Pennsylvania pharmacist for 27 years and served on the Pennsylvania Board of Pharmacy for 15 years, eight of those years as Chairman. During my tenure on the Board of Pharmacy, there was NEVER a disciplinary case, nor allegation that came before us, that alleged that an error or patient harm was caused by too many technicians on duty in the pharmacy.” - **Mike Podgurski, RPh, Pennsylvania Board of Pharmacy**

“I’m not aware of any information which suggests that patients in a state which has no ratio are any safer or worse off than patients in a state which has a ratio. There does not appear to be a public safety imperative for ratio requirements. Since every practice site is different, it would appear prudent to task the pharmacist-in-charge of a pharmacy with the appropriate staffing mix commensurate with the nature and scope of the practice site.” – **Malcolm Broussard, RPh, Executive Director, Louisiana Board of Pharmacy**

“Illinois has NEVER had any type of technician ratios /restrictions. During the 16 years that I served on the Illinois Board of Pharmacy (2001-2017) and Chairman of the Board for 5 terms, there was NEVER a single disciplinary case that came before the Board with even an allegation that the reason for a prescription error...or any type of patient harm was due to an excessive number of technicians on duty at the time that the error occurred.” - **Phil Burgess, RPh, Illinois Board of Pharmacy**

“The process of establishing a new group of pharmacy workers and a reasonable ratio to pharmacists in the state of Arizona was a fairly long one. It took about a total of about 15 years to occur even though it in retrospect was a rather simple process.” ... “In 2008, ... the ratio was eliminated completely, because no evidence existed it had any effect on patient safety.” – **Hal Wand RPh MBA, Director of the Arizona Board of Pharmacy 2003-2015**

“The requirement for a technician ratio would prohibit a pharmacist from fully expanding pharmacy services in many settings. Automation has been embraced by many practice settings to assist in technical processing of medication orders or prescriptions. In Kentucky there has not been an increase in medication errors reported based on the lack of technician/pharmacist ratio.” - **Steve Hart, R.Ph, Executive Director Kentucky Board of Pharmacy**

“Arizona eliminated the ratio almost 15 years ago. ...In these 15 years, there has never been a case of an error related to an unsafe number of technicians in the pharmacy.” – **Dennis McAllister, Arizona Board of Pharmacy**

“Delaware has never had Pharmacist : Technician ratio and patient safety have not been compromised. ... A well-trained technician can efficiently help the pharmacist, so the pharmacist can practice at the top of his/her license and improve patient care and outcomes.”
- **Tejal Patel, RPh, PharmD, MBA, Delaware Board of Pharmacy for the last 6 years & current President**

“In the last several years, Maine migrated to a no ratio regulation and left the technician staffing up to the pharmacist licensed with their board. There has been no negative outcomes from this change. I believe the citizens are getting better and more timely service and taking a greater understanding of how to use their medications effectively home with them.” **Mark Polli, R.Ph., Maine Board of Pharmacy**

“I have been President of the Maine Board of Pharmacy for the past 9 years. In 2013 ... we decided to eliminate the technician ratio. ... Since we adopted this position there have been no complaints due to too many technicians in a Pharmacy. ... My hope is that for Pharmacists to practice to the full scope of their license they need more ancillary help so they can be out front speaking and relating to patients to better their health care.” - **Joe Bruno, R.Ph., M.B.A., Maine Board of Pharmacy**

“I was on the board in New Hampshire for 10 years, beginning in 2001. During that time, we never had a patient safety issue that was determined to have occurred due to the supervision of too many technicians.” - **Tina Genovese, New Hampshire Board of Pharmacy**

“The state of Maryland does not have a technician ratio and has allowed pharmacist to decide the number of technicians they can supervise at any given time using their professional judgment... I do not recall any cases that was brought before the Board where the RPh technician ratio had a negative impact on patient safety or where the permit holder abused the ability to staff the pharmacy appropriately with technician support.” - **Jermaine Smith, R.Ph., Maryland Board of Pharmacy**

“I have spent 8 years on the Michigan Board of Pharmacy... Michigan is a state that has no pharmacist to technician ratio. In my 8 years on the board (2001-2009,) I did not review a case in either the full board or the DSC that involved an issue with a pharmacist that encountered a quality incident involving too many technicians to supervise. ... The idea of restricting the amount of technicians a pharmacist can utilize in their practice setting, works to the detriment of the patient and inhibits the pharmacist to provide patient care at the top of their license since the technicians are there to assist the pharmacist and patient, not make

decisions regarding patient care or quality decisions.” – **Laura A. Shaw, Michigan Board of Pharmacy**

“In 2004 I was a participant in the NABP Task Force to Develop Recommendations to Best Reduce Medication Errors in Community Pharmacy Practice... There were no recommendations to limit the number of technicians. In fact, the Task Force recognized that pharmacy technicians play a significant role in contributing to an environment that promotes patient safety and the minimization of medication errors. ... Removing technician ratios requirements allow pharmacists the ability to delegate more of the non-clinical medication dispensing activities, empowering them to focus on providing the clinical services that will facilitate better patient care and outcomes.” **Edward G. McGinley, former President of the New Jersey Board of Pharmacy**

“During my tenure on the board, we paid close attention to patient safety and how pharmacy technicians were utilized in Pennsylvania. I can safely say that patient safety was not negatively impacted because of the level of technician supervision that pharmacists provided in all practice settings.” - **Michael J. Romano, Former Member, Pennsylvania State Board of Pharmacy, Chairman 2004 & 2005, Vice Chairman 2009 & 2010**

“During my tenure on the Board, I am not aware of any cases that came before the Board for a violation of the practice act which were determined to have been caused by employing too many technicians per pharmacist at the time of the violation. Technician ratio was never mentioned during deliberation of cases as a cause for a violation, nor was there a desire by the Board to follow other states by instituting a ratio.” – **Tim Koch, RPh, CHC, Missouri Board of Pharmacy**

“As the former executive Director of the Rhode Island Board of Pharmacy for twenty years, ... no ratio environment did not negatively impact patient care. Instead, permitting the pharmacy practice to determine the number of technicians employed in their practice setting, has enhanced the efficiency of pharmacy operations and provided the pharmacist with more opportunities to provide cognitive services.” – **Catherine Cordy, RPh, Rhode Island Board of Pharmacy**

“The New Mexico Board of Pharmacy eliminated the tech ratio by rule change in June 2013. The Board reserved the right to impose a ratio on a licensee if it could be shown that a violation or complaint resulted from poor supervision due to the number of techs on duty. To date, the Board has not imposed a ratio on any licensee. I am not aware of any complaints or violations that have resulted from tech ratio issues.” – **Rich Mazzoni, Past President of both the New Mexico Board of Pharmacy and the California Board of Pharmacy**

Conclusion

Thank you for the opportunity to comment on this important issue. For all the reason stated above, we ask the Board move forward with a proposed rule that would either significantly increase or totally eliminate the pharmacist to technician ratio.

Sincerely,

A handwritten signature in black ink that reads "Mary Staples". The script is cursive and fluid, with the first name "Mary" and last name "Staples" clearly legible.

Mary Staples

cc: Liz MacMenamin, Retail Association of Nevada

Pharmacists Remain Strong in Gallup Honesty, Ethics Survey

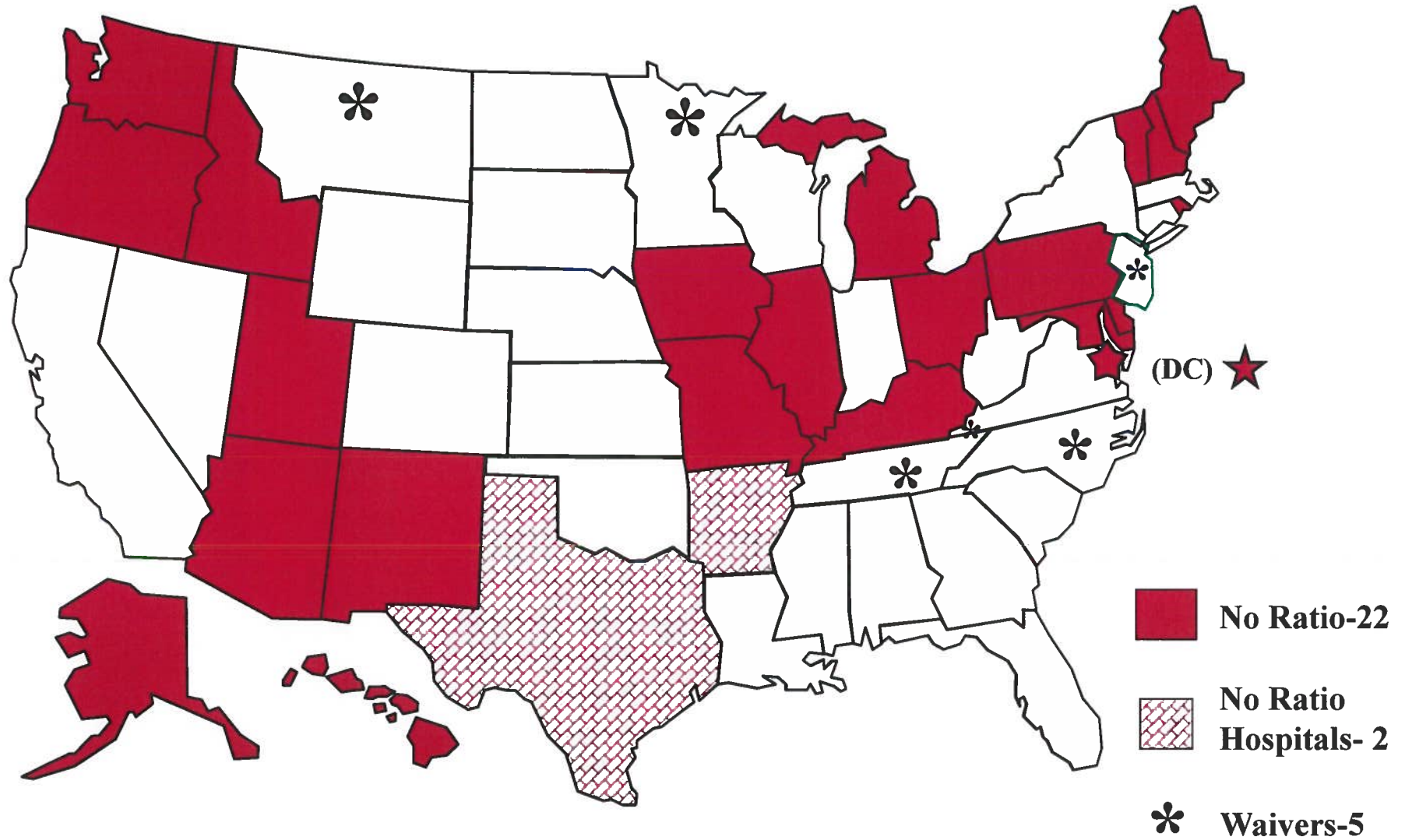
Please tell me how you would rate the honesty and ethical standards of people in these different fields – very high, high, average, low or very low?

| | Very high | High | Average | Low | Very low | No opinion |
|---------------------------|-----------|------|---------|-----|----------|------------|
| | % | % | % | % | % | % |
| Nurses | 28 | 56 | 15 | 2 | * | * |
| Medical doctors | 15 | 52 | 25 | 6 | 2 | 1 |
| Pharmacists | 14 | 52 | 28 | 4 | 1 | 1 |
| High school teachers | 17 | 43 | 29 | 8 | 2 | 1 |
| Police officers | 15 | 39 | 32 | 9 | 4 | 1 |
| Accountants | 5 | 37 | 48 | 6 | 1 | 3 |
| Funeral directors | 8 | 31 | 42 | 8 | 2 | 7 |
| Clergy | 8 | 29 | 43 | 12 | 3 | 5 |
| Journalists | 7 | 26 | 31 | 21 | 13 | 2 |
| Building contractors | 4 | 25 | 49 | 17 | 3 | 1 |
| Bankers | 3 | 24 | 50 | 17 | 4 | 1 |
| Real estate agents | 2 | 23 | 54 | 15 | 4 | 3 |
| Labor union leaders | 4 | 17 | 42 | 23 | 8 | 5 |
| Lawyers | 3 | 16 | 51 | 21 | 7 | 1 |
| Business executives | 3 | 14 | 49 | 26 | 6 | 3 |
| Stockbrokers | 2 | 12 | 48 | 26 | 6 | 6 |
| Advertising practitioners | 1 | 12 | 46 | 29 | 8 | 4 |
| Telemarketers | 1 | 8 | 32 | 33 | 23 | 2 |
| Members of Congress | 2 | 6 | 33 | 38 | 20 | 2 |
| Car salespeople | 1 | 7 | 47 | 33 | 11 | 2 |

Dec 3-12, 2018

GALLUP

NO Technician-to-Pharmacist Ratio



Updated 9-2019

Written Public Comment
Workshop
September 5, 2019

Irene Danao
6152 West Irvin Ave
Las Vegas NV 89141
Date

Nevada Board of Pharmacy
985 Damonte Ranch Pkwy, Ste 206
Reno, NV 89521

Dear Nevada Board of Pharmacy:

My name is Irene Danao and I am a pharmacist from Walgreens at Spring Mountain and Jones in Las Vegas. I am unable to attend your September board meeting but understand that the board is seeking feedback on your current proposal to increase the pharmacist to technician ratio in Nevada. Since I am unable to attend, I would like to respectfully ask that you read this letter into the record for consideration.

I am in full support of the concept of expansion of the pharmacist to technician ratio in Nevada but would like to see the proposal expanded from its current proposal of 4:1. I have heard that some pharmacists feel that having an expanded ratio may cause a more stressful environment for pharmacists because they will have more work to do. The opposite is actually true, my pharmacy fills an average of 500 prescriptions per day regardless of what the ratio is today or in the future. Allowing a greater ratio will allow me to schedule based on the needs of my pharmacy, staffing appropriately during the busiest times of the day and days of the week. Today I spend much of my day doing tasks that could be done by a trained technician (filling, typing and insurance processing,) an expanded ratio will allow me to focus solely on the duties that pharmacist should be focused on (immunizations, DUR, consultation) which should improve patient safety.

I appreciate the board taking the time to carefully deliberate this topic. Please feel free to contact me should you have any questions.

Sincerely,



Irene Danao

David Wuest

From: Heller, Daniel W <daniel.heller@sfdc.com>
Sent: Monday, September 2, 2019 12:36 PM
To: David Wuest
Subject: Tech Ratio

Hello Dave,

As the board discusses technician ratio's, I feel hospital pharmacy is being short sited on their drive to keep ratios low. In talking with other states that do not have ratios, the market seems to drive a good balance between pharmacist and techs without the need for outside influence. Companies understand safety concerns and know that if they put in ratios that jeopardize safety, they could be litigated against, and that is what keeps a good balance. What is more concerning from a safety standpoint is that companies can't afford to put another pharmacist on staff when they have met their 3:1 ratio in a pharmacy, so they just let that staff handle a huge workload, and that is when safety is compromised. However, if the state allowed for 5:1 (or larger number), it would meet the needs of the patient and the pharmacy, and let the pharmacist work on the counseling and verification side of things predominantly, and take away having to fill, dispense, and handle 3rd party adjudication concerns etc.

In addition, it is my belief that technology today and in the future allows the pharmacist(s) on staff to have their finger on the pulse of many things in the pharmacy from one station now, which is not something that a pharmacist could do in years past when this 3:1 ratio was put into place. Nothing can go out of pharmacy without a pharmacist fingerprinting, or signing off on a Rx electronically. The pharmacist can see everything happening in all areas of the pharmacy from one computer, and gives them more control. With telemedicine and Artificial intelligence becoming more dominant in the workplace, those advances in technology also give pharmacist more control of staff to manage safety and education of patients and still handle the operations of the pharmacy. We have to help keep regulations that can keep up with our future and technology, and 3:1 ratio does not do that.

Please share these notes with the board, and help them see that leaving our ratio's so low in the state of Nevada, actually bottlenecks the flow of prescriptions and perhaps is the reason for our pharmacies not being as safe as they could be (because workloads just go up with 3:1 ratios, as overlap pharmacists are just too expensive to add on to pharmacies that aren't earning enough to support them).

Speaking as just a pharmacist, I would support at a minimum 5:1 ratio in the state, and feel extremely confident that I could manage the pharmacy, and manage the workflow without jeopardizing safety.

Best Regards,

Dan Heller, Pharm.D.
Health & Wellness Pharmacy Practice Coordinator

Smith's Food & Drug Company | Health & Wellness Team
(O) 702-262-5114 (M) 702-329-5843 (F) 702-262-5122
daniel.heller@sfdc.com

Email Disclaimer: <http://www.kroger.com/emaildisclaimer>

This e-mail message, including any attachments, is for the sole use of the intended recipient(s) and may contain information that is confidential and protected by law from unauthorized disclosure. Any unauthorized review, use, disclosure or distribution is prohibited. If you are not the intended recipient, please contact the sender by reply e-mail and destroy all copies of the original message.



Lauren Paul, PharmD, MS | 200 Highland Corporate Drive | Woonsocket, RI 02895 | T: 540-604-3661

August 23, 2019

J. David Wuest R.Ph.
Executive Secretary
Nevada State Board of Pharmacy
85 Damonte Ranch Pkwy Ste 206
Reno, NV, 89521

Re: Amendment of Nevada Administrative Code (NAC) 639.250 Restrictions on Supervision

Dear Executive Secretary Wuest,

I am writing to you in my capacity as Sr Director of Pharmacy Regulatory Affairs for CVS Health. CVS Health, the largest pharmacy health care provider in the United States, is uniquely positioned to provide diverse access points of care to patients in the state of Nevada through our integrated offerings across the spectrum of pharmacy care. We would like to thank the Board for their vigilance in continuously improving the laws and regulations that guide pharmacists, intern pharmacists and pharmaceutical technicians serving Nevada patients.

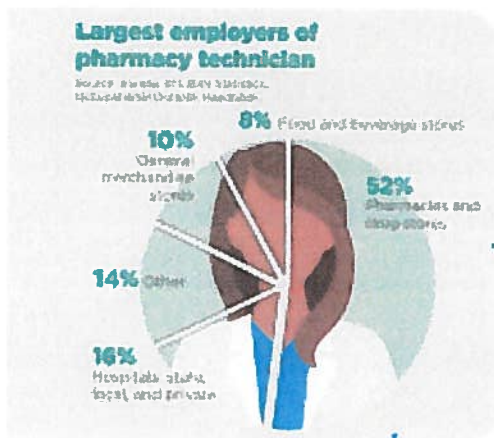
CVS Health appreciates the Board's efforts to amend language in NAC 639.250, allowing an increase in pharmacy technician supervision in nondispensing pharmacies. We support the drafted language that allows a pharmacist to supervise eight pharmaceutical technicians or six pharmaceutical technicians and two pharmaceutical technicians in training at one time in a pharmacy that does not dispense.

If you have any questions, please contact me directly at 540-604-3661.

Sincerely,

A handwritten signature in blue ink that reads "Lauren Paul, PharmD".

Lauren Paul, PharmD., MS
Sr Director, Pharmacy Regulatory Affairs
CVS Health



Rachel Balick, reporter

© 2018 American Pharmacists Association. Published by Elsevier Inc. All rights reserved.

Medical Billing & Coding - 9 Month Hands-On Program

Train for a Rewarding Career in Hospitals, Clinics, Insurance Facilities & More! asher.edu

- [Update your Profile](#)

2 X

OPEN

Logout

Quick Links

- [Clinical Resources](#)
- [Videos](#)
- [Conference Coverage](#)
- [Consultation Center](#)
- [Publications](#)
- [Continuing Education](#)

PUBLICATIONS

This month in *Pharmacy Times*



[Substance Abuse Poses Challenges in Pharmacies](#)

[Identify How and When to Treat Dyspepsia and Heartburn](#)

[Constipation Frustrates Patients and Providers](#)

[Laws in 20 States Address Insurance-Mandated Step Therapy](#)

[Joining a Pharmacy Organization Yields Benefits](#)

[Counsel Patients With GERD About Certain Foods](#)

[It Is Time to Go to Bat for Community Pharmacies](#)

[⬅ Back to issue](#)

Pharmacy Technician Regulation

JUNE 16, 2016

Kristy Malacos, MS, CPhT

The role of a pharmacy technician has expanded with the increasingly clinical and patient-driven focus of pharmacy practice. Through this elevation of responsibility, a clear gap in standardization has become prominent throughout the United States.

Although progress has been made in regulating the technician profession, the requirements vary greatly among the states that do regulate technicians. According to the Pharmacy Technician Certification Board (PTCB), 23 states and the District of Columbia regulate pharmacy technicians and require national certification as part of these regulations.¹ Of the remaining states, 22 have regulations for pharmacy technicians, although national certification is not one of them.¹ Additionally, there are still 5 states that do not regulate pharmacy technicians as of December 2015: Colorado, Hawaii, New York, Pennsylvania, and Wisconsin.¹

Many states require licensure or registration, in which the state Board of Pharmacy (BOP) grants permission for an individual to practice as a pharmacy technician after he or she completes certain criteria.² Registration is important for pharmacy practice, as it creates a record of all pharmacy technicians working in the state, giving each state's BOP the ability to monitor technician activity and accountability. This helps technicians practice to their full potential.

The pharmacist-to-pharmacy technician ratio is another state-specific regulation with a lack of standardization across the United States, as it is up to each state to limit how many technicians a pharmacist may supervise at one time. This ratio usually varies from 1:2 (1 pharmacist for every 2 technicians) to 1:6. Some states will vary the ratio depending on the practice setting or allow a higher ratio if one or more of the technicians is certified. Other states do not even have a set ratio at all, instead allowing each pharmacy practice to determine an appropriate number of technicians to be supervised by a pharmacist. The Online Table contains a

summary of state pharmacist-to-technician ratios.

Table: State Pharmacist-to-Technician Ratios

| State | Required Ratio |
|----------------|--------------------------------------|
| Alabama | 1:3 |
| Alaska | None |
| Arizona | None |
| Arkansas | 1:3 |
| California | 1:2 |
| Colorado | 1:3 |
| Connecticut | 1:3 institutional, 1:2 retail |
| Delaware | None |
| Florida | 1:4 |
| Georgia | 1:2 unless 2 are certified, than 1:3 |
| Hawaii | None |
| Idaho | 1:6 |
| Illinois | None |
| Indiana | 1:4 |
| Iowa | None |
| Kansas | 1:2 |
| Kentucky | None |
| Louisiana | 1:3 |
| Maine | None |
| Maryland | None |
| Massachusetts | 1:4 |
| Michigan | None |
| Minnesota | 1:3 unless 1 is certified, than 1:4 |
| Mississippi | 1:2 |
| Missouri | None |
| Montana | 1:3 |
| Nebraska | 1:3 |
| Nevada | 1:3 |
| New Hampshire | None |
| New Jersey | 1:2, unless 1 is certified, than 1:3 |
| New Mexico | None |
| New York | 1:2 |
| North Carolina | 1:2, unless seek BOP approval |
| North Dakota | 1:3 retail, 1:4 hospital |
| Ohio | None |
| Oklahoma | 1:2 |
| Oregon | None |
| Pennsylvania | None |
| Rhode Island | None |
| South Carolina | 1:3 |
| South Dakota | 1:3 retail, none for hospital |
| Tennessee | 1:4 if 1 is certified, 1:3 if not |
| Texas | 1:4 |
| Utah | 1:3 |
| Vermont | None |
| Virginia | 1:4 |
| Washington | 1:3 |
| West Virginia | 1:4 |
| Wisconsin | 1:4 BOP can approve higher ratio |
| Wyoming | 1:3 |

BOP = Board of Pharmacy

Participants in Our Voice, a Pharmacy Technician Journaling Initiative created by the American Association of Pharmacy Technicians, responded to survey questions pertaining to each state's pharmacist-to-technician ratio. The results were complex: 36% of technicians did not know if their state had a requirement, while others responded with ratios that had just recently been abolished or revised by individual state BOP. Although the ratio of pharmacist to technicians is not standardized, and not regulated in some states at all, 18% of Our Voice participants encountered an error where they felt it was related to a high ratio of technicians to pharmacist.

Pharmacy technician education is another key component in which regulations are not standardized. Only 27% of Our Voice participants practice in states that require education for pharmacy technicians, although 37% of these participants noted that completion of the Pharmacy Technician Certification Exam (PTCE) is required to practice in their state. However, the PTCE will require all new candidates to complete an American Society of Health System (ASHP) or Accreditation Council for Pharmacy Education (ACPE) accredited pharmacy technician training program by 20203; with this additional requirement, an increase in state-specific educational requirements may follow the schedule of the PTCE.

Although there are many regulations that impact pharmacy technicians, many technicians are also involved in regulatory surveys and accrediting bodies through their place of employment. Depending on the pharmacy practice setting, Our Voice participants work with The Joint Commission (18%), ASHP/ACPE accreditors (11%), their state BOP (53%), or the FDA (5%). They also hold varying levels of responsibility in this matter: 60% have minimal involvement, assisting only during the regulatory visits, while 11% are majorly involved, helping to prepare and submit requested documents, as well as conducting follow-up evaluations. The remaining 29% are not involved in any survey or regulatory operations. Pharmacy regulations continue to evolve as pharmacy technicians continue to experience growth in their responsibilities and career options. With this continuous expansion, patient safety must always be at the forefront. An increase in education and registration requirements for pharmacy technicians will ultimately serve to help keep patients safe.



Lauren Paul, PharmD, MS | 200 Highland Corporate Drive | Woonsocket, RI 02895 | T: 540-604-3661

August 23, 2019

J. David Wuest R.Ph.
Executive Secretary
Nevada State Board of Pharmacy
85 Damonte Ranch Pkwy Ste 206
Reno, NV, 89521

Re: Amendment of Nevada Administrative Code (NAC) 639.250 Restrictions on Supervision

Dear Executive Secretary Wuest,

I am writing to you in my capacity as Sr Director of Pharmacy Regulatory Affairs for CVS Health. CVS Health, the largest pharmacy health care provider in the United States, is uniquely positioned to provide diverse access points of care to patients in the state of Nevada through our integrated offerings across the spectrum of pharmacy care. We would like to thank the Board for their vigilance in continuously improving the laws and regulations that guide pharmacists, intern pharmacists and pharmaceutical technicians serving Nevada patients.

CVS Health appreciates the Board's efforts to amend language in NAC 639.250, allowing an increase in pharmacy technician supervision in nondispensing pharmacies. We support the drafted language that allows a pharmacist to supervise eight pharmaceutical technicians or six pharmaceutical technicians and two pharmaceutical technicians in training at one time in a pharmacy that does not dispense.

If you have any questions, please contact me directly at 540-604-3661.

Sincerely,

A handwritten signature in blue ink that reads "Lauren Paul, PharmD". The signature is written in a cursive, flowing style.

Lauren Paul, PharmD., MS
Sr Director, Pharmacy Regulatory Affairs
CVS Health

Joe Kellogg
271 Calle Palacio St.
Henderson, NV 89012
nevjo@aol.com
August 2, 2019



Dr. Dave Wuest, Ex. Director
NV Board of Pharmacy
985 Damonte Ranch Pkwy Ste 206
Reno, NV 89521

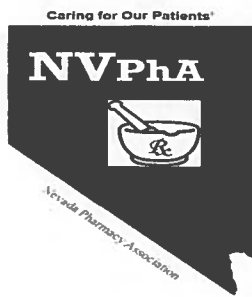
Dear Dr. Dave,

Please see attached letter with backup information from The NV Pharmacy Association. I'm requesting that you include our thoughts to The Board for their consideration at the Public Hearing on Pharmacy Technician ratio.

Being multi state licensed and actively working in other states, I have a greater appreciation for dedicated, well-trained, experienced pharmacy technicians than most pharmacists and supervisory individuals.

This issue is more complex than just a ratio. The NV Pharmacy Association suggests The Board consider our recommendations as stated in the last paragraph of the letter to the Board.

Sincerely,



Nevada Pharmacy Association

PO Box 35668

Las Vegas, NV 89133-5668

(702) 938-5199

August 02, 2019

To: Dr. Dave Wuest, Exec. Director
NV Board of Pharmacy
985 Damonte Ranch Pkwy Ste 206
Reno, NV 89521

Dear Dr. Dave,

Re: Proposed revision of NAC 639.250: Pharmacy Technician Ratio

A quote from Pharmacy Today, October 2018. (Article attached)

"Our industry will be better served if we recognize that pharmacy technicians are not just short-term workers on their way to another career," Sarah Lawrence, PharmD, director of the pharmacy technician program at Sullivan University in Louisville, KY.

At the July 18, 2019 meeting The Board viewed some interesting state graphs. A quick look at a few neighboring states show this issue is more complex than just a ratio.

Arizona: R4-23-1102, requires Pharmacy Technicians to be certified (PTCB)

Utah: Required certification exams are (PTCB and ExCPT)

Colorado: The State Board of Pharmacy in Colorado permits non-certified Pharmacy Technicians to work under the supervision of a licensed pharmacist as long as there are only 3 or less of them. More than three technicians require one of them to have a degree from any accredited pharmacy programs, obtain certification or must have a 500-hour experiential training.

Idaho: Required certification exams are (PTCB and ExCPT)

Washington: The current standard ratio of pharmacists to pharmacy technicians is one pharmacist to a maximum of three pharmacy technicians (WAC 246-901-130(1)). The Commission is engaged in rulemaking that may result in a change to the standard ratio.

Oregon: 1) To qualify for licensure as a Certified Oregon Pharmacy Technician, the applicant must demonstrate that he or she has taken and passed a national pharmacy technician certification examination offered by:(a) The Pharmacy Technician Certification Board (PTCB); or (b) The National Healthcareer Association (NHA).

In Pharmacy Times, June 16, 2016, (Article attached) "Pharmacy Technician Regulation" by Kristy Malacos, shows a ratio list by state. Key takeaways come from the last three sentences in the article. "Pharmacy regulations continue to evolve as pharmacy technicians continue to experience growth in their responsibilities and career options. With this continuous expansion, patient safety must always be at the forefront. An increase in education and registration requirements for pharmacy technicians will ultimately serve to help keep patients safe."

These key takeaways clearly define The Board's considerations in this matter, **"Growth in responsibilities and career options along with an increase in education and registration requirements will help keep patients safe."**

It appears the six states listed above increased the educational and registration requirements as justification for the increase in technician to pharmacist ratio. The NV Pharmacy Association suggests that once educational and registration requirements are increased, The Board may wish to re-visit permitted Pharmacy Technician duties.

Sincerely,

A handwritten signature in black ink, appearing to read 'Joe Kellogg', written over a light blue horizontal line.

Joe Kellogg, RPH
Treasurer,
NV Pharmacy Association

< Previous Article

Next Article >

October 2018 Volume 24, Issue 10, Page 37

Pharmacy technicians are in high demand

Rachel Balick

Every pharmacist knows that skilled and reliable pharmacy technicians are key to providing the highest quality care to patients. Labor market data backs this up—the U.S. Bureau of Labor Statistics reports that demand for technicians is higher than average. Factors affecting this demand include increased use of medications, closing of for-profit technician education programs, and expansion of pharmacy services.

William Schimmel, CEO of the Pharmacy Technician Certification Board (PTCB), says PTCB is working to build “career ladders for technicians. Investing in technicians and providing opportunities to show what they know is going to keep them at their current employer.” PTCB recently launched the Compounded Sterile Preparation Technician (CSPT) certification program.

This is good for pharmacists, too. “The more technicians can do, the more time is freed up for the pharmacist to engage in more clinical work like [medication therapy management], immunizations, and point-of-care testing,” Schimmel said.

Sarah Lawrence, PharmD, director of the pharmacy technician program at Sullivan University in Louisville, KY, cites telepharmacy, specialty pharmacy, and other areas of practice as drivers of technician demand.

“Today’s pharmacy technicians have many choices beyond the traditional community and hospital practice settings,” she said. Most of her students receive multiple job offers for their first position.

“Our industry will be better served if we recognize that pharmacy technicians are not just short-term workers on their way to another career,” she said. “The key to this is better compensation, promoting professional involvement, and offering opportunities for advancement.”

Job growth

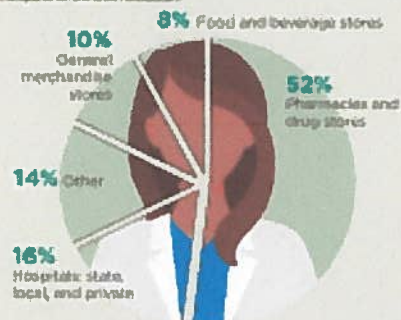
Source: Bureau of Labor Statistics, Occupational Outlook Handbook

12% growth rate by 2026. *Average* growth rate for all positions is 7%. In 2016, there were 402,500 technicians. By 2026, that number is expected to rise by 47,800.



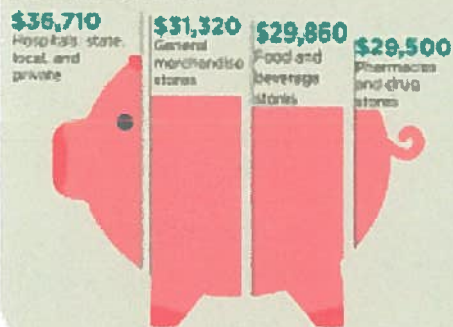
Largest employers of pharmacy technician

Source: Bureau of Labor Statistics, Occupational Outlook Handbook



Median annual wages for pharmacy technicians in the top industries

Source: Bureau of Labor Statistics, Occupational Outlook Handbook



Rachel Balick, reporter

© 2018 American Pharmacists Association. Published by Elsevier Inc. All rights reserved.

Medical Billing & Coding - 9 Month Hands-On Program

Train for a Rewarding Career in Hospitals, Clinics, Insurance Facilities & More! [asher.edu](#)

■ [Update your Profile](#)

OPEN

Logout

Quick Links

- [Clinical Resources](#)
- [Videos](#)
- [Conference Coverage](#)
- [Consultation Center](#)
- [Publications](#)
- [Continuing Education](#)

PUBLICATIONS

This month in *Pharmacy Times*



[Substance Abuse Poses Challenges in Pharmacies](#)

[Identify How and When to Treat Dyspepsia and Heartburn](#)

[Constipation Frustrates Patients and Providers](#)

[Laws in 20 States Address Insurance-Mandated Step Therapy](#)

[Joining a Pharmacy Organization Yields Benefits](#)

[Counsel Patients With GERD About Certain Foods](#)

[It Is Time to Go to Bat for Community Pharmacies](#)

[← Back to issue](#)

Pharmacy Technician Regulation

JUNE 16, 2016

Kristy Malacos, MS, CPhT

The role of a pharmacy technician has expanded with the increasingly clinical and patient-driven focus of pharmacy practice. Through this elevation of responsibility, a clear gap in standardization has become prominent throughout the United States.

Although progress has been made in regulating the technician profession, the requirements vary greatly among the states that do regulate technicians. According to the Pharmacy Technician Certification Board (PTCB), 23 states and the District of Columbia regulate pharmacy technicians and require national certification as part of these regulations.¹ Of the remaining states, 22 have regulations for pharmacy technicians, although national certification is not one of them.¹ Additionally, there are still 5 states that do not regulate pharmacy technicians as of December 2015: Colorado, Hawaii, New York, Pennsylvania, and Wisconsin.¹

Many states require licensure or registration, in which the state Board of Pharmacy (BOP) grants permission for an individual to practice as a pharmacy technician after he or she completes certain criteria.² Registration is important for pharmacy practice, as it creates a record of all pharmacy technicians working in the state, giving each state's BOP the ability to monitor technician activity and accountability. This helps technicians practice to their full potential.

The pharmacist-to-pharmacy technician ratio is another state-specific regulation with a lack of standardization across the United States, as it is up to each state to limit how many technicians a pharmacist may supervise at one time. This ratio usually varies from 1:2 (1 pharmacist for every 2 technicians) to 1:6. Some states will vary the ratio depending on the practice setting or allow a higher ratio if one or more of the technicians is certified. Other states do not even have a set ratio at all, instead allowing each pharmacy practice to determine an appropriate number of technicians to be supervised by a pharmacist. The Online Table contains a

summary of state pharmacist-to-technician ratios.

Table: State Pharmacist-to-Technician Ratios

| State | Required Ratio |
|----------------|--------------------------------------|
| Alabama | 1:3 |
| Alaska | None |
| Arizona | None |
| Arkansas | 1:3 |
| California | 1:2 |
| Colorado | 1:3 |
| Connecticut | 1:3 institutional, 1:2 retail |
| Delaware | None |
| Florida | 1:4 |
| Georgia | 1:2 unless 2 are certified, than 1:3 |
| Hawaii | None |
| Idaho | 1:6 |
| Illinois | None |
| Indiana | 1:4 |
| Iowa | None |
| Kansas | 1:2 |
| Kentucky | None |
| Louisiana | 1:3 |
| Maine | None |
| Maryland | None |
| Massachusetts | 1:4 |
| Michigan | None |
| Minnesota | 1:3 unless 1 is certified, than 1:4 |
| Mississippi | 1:2 |
| Missouri | None |
| Montana | 1:3 |
| Nebraska | 1:3 |
| Nevada | 1:3 |
| New Hampshire | None |
| New Jersey | 1:2, unless 1 is certified, than 1:3 |
| New Mexico | None |
| New York | 1:2 |
| North Carolina | 1:2, unless seek BOP approval |
| North Dakota | 1:3 retail, 1:4 hospital |
| Ohio | None |
| Oklahoma | 1:2 |
| Oregon | None |
| Pennsylvania | None |
| Rhode Island | None |
| South Carolina | 1:3 |
| South Dakota | 1:3 retail, none for hospital |
| Tennessee | 1:4 if 1 is certified, 1:3 if not |
| Texas | 1:4 |
| Utah | 1:3 |
| Vermont | None |
| Virginia | 1:4 |
| Washington | 1:3 |
| West Virginia | 1:4 |
| Wisconsin | 1:4 BOP can approve higher ratio |
| Wyoming | 1:3 |

BOP = Board of Pharmacy

Participants in Our Voice, a Pharmacy Technician Journaling Initiative created by the American Association of Pharmacy Technicians, responded to survey questions pertaining to each state's pharmacist-to-technician ratio. The results were complex: 36% of technicians did not know if their state had a requirement, while others responded with ratios that had just recently been abolished or revised by individual state BOP. Although the ratio of pharmacist to technicians is not standardized, and not regulated in some states at all, 18% of Our Voice participants encountered an error where they felt it was related to a high ratio of technicians to pharmacist.

Pharmacy technician education is another key component in which regulations are not standardized. Only 27% of Our Voice participants practice in states that require education for pharmacy technicians, although 37% of these participants noted that completion of the Pharmacy Technician Certification Exam (PTCE) is required to practice in their state. However, the PTCB will require all new candidates to complete an American Society of Health System (ASHP) or Accreditation Council for Pharmacy Education (ACPE) accredited pharmacy technician training program by 20203; with this additional requirement, an increase in state-specific educational requirements may follow the schedule of the PTCB.

Although there are many regulations that impact pharmacy technicians, many technicians are also involved in regulatory surveys and accrediting bodies through their place of employment. Depending on the pharmacy practice setting, Our Voice participants work with The Joint Commission (18%), ASHP/ACPE accreditors (11%), their state BOP (53%), or the FDA (5%). They also hold varying levels of responsibility in this matter: 60% have minimal involvement, assisting only during the regulatory visits, while 11% are majorly involved, helping to prepare and submit requested documents, as well as conducting follow-up evaluations. The remaining 29% are not involved in any survey or regulatory operations. Pharmacy regulations continue to evolve as pharmacy technicians continue to experience growth in their responsibilities and career options. With this continuous expansion, patient safety must always be at the forefront. An increase in education and registration requirements for pharmacy technicians will ultimately serve to help keep patients safe.