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FIRST REPRINT

A.B. 310

ASSEMBLY BILL NO. 310—ASSEMBLYMAN FRIERSON

MARCH 18, 2019

Referred to Committee on Commerce and Labor

SUMMARY—Revises provisions regarding the manner in which prescriptions are given to pharmacies. (BDR 54-885)

FISCAL NOTE: Effect on Local Government: Increases or Newly Provides for Term of Imprisonment in County or City Jail or Detention Facility.
Effect on the State: Yes.

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

AN ACT relating to prescriptions; requiring a prescription to be given to a pharmacy by electronic transmission in certain circumstances; providing certain exemptions; authorizing professional discipline and administrative penalties against a practitioner who violates that requirement; authorizing a written prescription to be given indirectly; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law prescribes the manner in which a prescription must be given. (NRS 639.2353) **Section 7** of this bill requires a prescription for a controlled substance to be given to a pharmacy by electronic transmission, except in certain cases including: (1) prescriptions issued by a veterinarian; (2) certain situations where an electronic prescription is not practical or feasible or is prohibited by federal law; (3) when a prescription is not issued to a specific person; and (4) pursuant to a waiver granted by the State Board of Pharmacy under exceptional circumstances. **Sections 1-7** of this bill authorize professional discipline to be taken against a practitioner who fails to comply with the requirements of **section 7**. **Section 7** additionally authorizes the imposition of administrative penalties against such a practitioner, and **sections 7 and 9.5** of this bill provide that such a practitioner is subject only to those administrative penalties or professional discipline and is not subject to criminal penalties. **Sections 8-11** of this bill make conforming changes. **Section 8** also generally authorizes a written prescription to be given indirectly when an electronic prescription is not required.



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THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. NRS 630.3062 is hereby amended to read as follows:

630.3062 1. The following acts, among others, constitute grounds for initiating disciplinary action or denying licensure:

(a) Failure to maintain timely, legible, accurate and complete medical records relating to the diagnosis, treatment and care of a patient.

(b) Altering medical records of a patient.

(c) Making or filing a report which the licensee knows to be false, failing to file a record or report as required by law or knowingly or willfully obstructing or inducing another to obstruct such filing.

(d) Failure to make the medical records of a patient available for inspection and copying as provided in NRS 629.061, if the licensee is the custodian of health care records with respect to those records.

(e) Failure to comply with the requirements of NRS 630.3068.

(f) Failure to report any person the licensee knows, or has reason to know, is in violation of the provisions of this chapter or the regulations of the Board within 30 days after the date the licensee knows or has reason to know of the violation.

(g) Failure to comply with the requirements of NRS 453.163, 453.164, 453.226, 639.23507 and 639.2391 to 639.23916, inclusive, **and section 7 of this act** and any regulations adopted by the State Board of Pharmacy pursuant thereto.

(h) Fraudulent, illegal, unauthorized or otherwise inappropriate prescribing, administering or dispensing of a controlled substance listed in schedule II, III or IV.

2. As used in this section, "custodian of health care records" has the meaning ascribed to it in NRS 629.016.

Sec. 2. NRS 631.3475 is hereby amended to read as follows:

631.3475 The following acts, among others, constitute unprofessional conduct:

1. Malpractice;

2. Professional incompetence;

3. Suspension or revocation of a license to practice dentistry, the imposition of a fine or other disciplinary action by any agency of another state authorized to regulate the practice of dentistry in that state;

4. More than one act by the dentist or dental hygienist constituting substandard care in the practice of dentistry or dental hygiene;



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5. Administering, dispensing or prescribing any controlled substance or any dangerous drug as defined in chapter 454 of NRS, if it is not required to treat the dentist's patient;

6. Knowingly procuring or administering a controlled substance or a dangerous drug as defined in chapter 454 of NRS that is not approved by the United States Food and Drug Administration, unless the unapproved controlled substance or dangerous drug:

(a) Was procured through a retail pharmacy licensed pursuant to chapter 639 of NRS;

(b) Was procured through a Canadian pharmacy which is licensed pursuant to chapter 639 of NRS and which has been recommended by the State Board of Pharmacy pursuant to subsection 4 of NRS 639.2328; or

(c) Is marijuana being used for medical purposes in accordance with chapter 453A of NRS;

7. Chronic or persistent inebriety or addiction to a controlled substance, to such an extent as to render the person unsafe or unreliable as a practitioner, or such gross immorality as tends to bring reproach upon the dental profession;

8. Conviction of a felony or misdemeanor involving moral turpitude or which relates to the practice of dentistry in this State, or conviction of any criminal violation of this chapter;

9. Conviction of violating any of the provisions of NRS 616D.200, 616D.220, 616D.240 or 616D.300 to 616D.440, inclusive;

10. Failure to comply with the provisions of NRS 453.163, 453.164, 453.226, 639.23507 and 639.2391 to 639.23916, inclusive, **and section 7 of this act** and any regulations adopted by the State Board of Pharmacy pursuant thereto.

11. Fraudulent, illegal, unauthorized or otherwise inappropriate prescribing, administering or dispensing of a controlled substance listed in schedule II, III or IV;

12. Failure to comply with the provisions of NRS 454.217 or 629.086;

13. Failure to obtain any training required by the Board pursuant to NRS 631.344; or

14. Operation of a medical facility, as defined in NRS 449.0151, at any time during which:

(a) The license of the facility is suspended or revoked; or

(b) An act or omission occurs which results in the suspension or revocation of the license pursuant to NRS 449.160.

➔ This subsection applies to an owner or other principal responsible for the operation of the facility.



Sec. 3. NRS 632.347 is hereby amended to read as follows:

632.347 1. The Board may deny, revoke or suspend any license or certificate applied for or issued pursuant to this chapter, or take other disciplinary action against a licensee or holder of a certificate, upon determining that the licensee or certificate holder:

(a) Is guilty of fraud or deceit in procuring or attempting to procure a license or certificate pursuant to this chapter.

(b) Is guilty of any offense:

(1) Involving moral turpitude; or

(2) Related to the qualifications, functions or duties of a licensee or holder of a certificate,

➤ in which case the record of conviction is conclusive evidence thereof.

(c) Has been convicted of violating any of the provisions of NRS 616D.200, 616D.220, 616D.240 or 616D.300 to 616D.440, inclusive.

(d) Is unfit or incompetent by reason of gross negligence or recklessness in carrying out usual nursing functions.

(e) Uses any controlled substance, dangerous drug as defined in chapter 454 of NRS, or intoxicating liquor to an extent or in a manner which is dangerous or injurious to any other person or which impairs his or her ability to conduct the practice authorized by the license or certificate.

(f) Is a person with mental incompetence.

(g) Is guilty of unprofessional conduct, which includes, but is not limited to, the following:

(1) Conviction of practicing medicine without a license in violation of chapter 630 of NRS, in which case the record of conviction is conclusive evidence thereof.

(2) Impersonating any applicant or acting as proxy for an applicant in any examination required pursuant to this chapter for the issuance of a license or certificate.

(3) Impersonating another licensed practitioner or holder of a certificate.

(4) Permitting or allowing another person to use his or her license or certificate to practice as a licensed practical nurse, registered nurse, nursing assistant or medication aide - certified.

(5) Repeated malpractice, which may be evidenced by claims of malpractice settled against the licensee or certificate holder.

(6) Physical, verbal or psychological abuse of a patient.

(7) Conviction for the use or unlawful possession of a controlled substance or dangerous drug as defined in chapter 454 of NRS.

(h) Has willfully or repeatedly violated the provisions of this chapter. The voluntary surrender of a license or certificate issued



pursuant to this chapter is prima facie evidence that the licensee or certificate holder has committed or expects to commit a violation of this chapter.

(i) Is guilty of aiding or abetting any person in a violation of this chapter.

(j) Has falsified an entry on a patient's medical chart concerning a controlled substance.

(k) Has falsified information which was given to a physician, pharmacist, podiatric physician or dentist to obtain a controlled substance.

(l) Has knowingly procured or administered a controlled substance or a dangerous drug as defined in chapter 454 of NRS that is not approved by the United States Food and Drug Administration, unless the unapproved controlled substance or dangerous drug:

(1) Was procured through a retail pharmacy licensed pursuant to chapter 639 of NRS;

(2) Was procured through a Canadian pharmacy which is licensed pursuant to chapter 639 of NRS and which has been recommended by the State Board of Pharmacy pursuant to subsection 4 of NRS 639.2328;

(3) Is marijuana being used for medical purposes in accordance with chapter 453A of NRS; or

(4) Is an investigational drug or biological product prescribed to a patient pursuant to NRS 630.3735 or 633.6945.

(m) Has been disciplined in another state in connection with a license to practice nursing or a certificate to practice as a nursing assistant or medication aide - certified, or has committed an act in another state which would constitute a violation of this chapter.

(n) Has engaged in conduct likely to deceive, defraud or endanger a patient or the general public.

(o) Has willfully failed to comply with a regulation, subpoena or order of the Board.

(p) Has operated a medical facility at any time during which:

(1) The license of the facility was suspended or revoked; or

(2) An act or omission occurred which resulted in the suspension or revocation of the license pursuant to NRS 449.160.

➤ This paragraph applies to an owner or other principal responsible for the operation of the facility.

(q) Is an advanced practice registered nurse who has failed to obtain any training required by the Board pursuant to NRS 632.2375.

(r) Is an advanced practice registered nurse who has failed to comply with the provisions of NRS 453.163, 453.164, 453.226, 639.23507, 639.2391 to 639.23916, inclusive, *and section 7 of this*



1 **act** and any regulations adopted by the State Board of Pharmacy
2 pursuant thereto.

3 (s) Has engaged in the fraudulent, illegal, unauthorized or
4 otherwise inappropriate prescribing, administering or dispensing of
5 a controlled substance listed in schedule II, III or IV.

6 (t) Has violated the provisions of NRS 454.217 or 629.086.

7 2. For the purposes of this section, a plea or verdict of guilty or
8 guilty but mentally ill or a plea of nolo contendere constitutes a
9 conviction of an offense. The Board may take disciplinary action
10 pending the appeal of a conviction.

11 3. A licensee or certificate holder is not subject to disciplinary
12 action solely for administering auto-injectable epinephrine pursuant
13 to a valid order issued pursuant to NRS 630.374 or 633.707.

14 4. As used in this section, "investigational drug or biological
15 product" has the meaning ascribed to it in NRS 454.351.

16 **Sec. 4.** NRS 633.511 is hereby amended to read as follows:

17 633.511 1. The grounds for initiating disciplinary action
18 pursuant to this chapter are:

19 (a) Unprofessional conduct.

20 (b) Conviction of:

21 (1) A violation of any federal or state law regulating the
22 possession, distribution or use of any controlled substance or any
23 dangerous drug as defined in chapter 454 of NRS;

24 (2) A felony relating to the practice of osteopathic medicine
25 or practice as a physician assistant;

26 (3) A violation of any of the provisions of NRS 616D.200,
27 616D.220, 616D.240 or 616D.300 to 616D.440, inclusive;

28 (4) Murder, voluntary manslaughter or mayhem;

29 (5) Any felony involving the use of a firearm or other deadly
30 weapon;

31 (6) Assault with intent to kill or to commit sexual assault or
32 mayhem;

33 (7) Sexual assault, statutory sexual seduction, incest,
34 lewdness, indecent exposure or any other sexually related crime;

35 (8) Abuse or neglect of a child or contributory delinquency;
36 or

37 (9) Any offense involving moral turpitude.

38 (c) The suspension of a license to practice osteopathic medicine
39 or to practice as a physician assistant by any other jurisdiction.

40 (d) Malpractice or gross malpractice, which may be evidenced
41 by a claim of malpractice settled against a licensee.

42 (e) Professional incompetence.

43 (f) Failure to comply with the requirements of NRS 633.527.

44 (g) Failure to comply with the requirements of subsection 3 of
45 NRS 633.471.



(h) Failure to comply with the provisions of NRS 633.694.

(i) Operation of a medical facility, as defined in NRS 449.0151, at any time during which:

(1) The license of the facility is suspended or revoked; or

(2) An act or omission occurs which results in the suspension or revocation of the license pursuant to NRS 449.160.

➤ This paragraph applies to an owner or other principal responsible for the operation of the facility.

(j) Failure to comply with the provisions of subsection 2 of NRS 633.322.

(k) Signing a blank prescription form.

(l) Knowingly or willfully procuring or administering a controlled substance or a dangerous drug as defined in chapter 454 of NRS that is not approved by the United States Food and Drug Administration, unless the unapproved controlled substance or dangerous drug:

(1) Was procured through a retail pharmacy licensed pursuant to chapter 639 of NRS;

(2) Was procured through a Canadian pharmacy which is licensed pursuant to chapter 639 of NRS and which has been recommended by the State Board of Pharmacy pursuant to subsection 4 of NRS 639.2328;

(3) Is marijuana being used for medical purposes in accordance with chapter 453A of NRS; or

(4) Is an investigational drug or biological product prescribed to a patient pursuant to NRS 630.3735 or 633.6945.

(m) Attempting, directly or indirectly, by intimidation, coercion or deception, to obtain or retain a patient or to discourage the use of a second opinion.

(n) Terminating the medical care of a patient without adequate notice or without making other arrangements for the continued care of the patient.

(o) In addition to the provisions of subsection 3 of NRS 633.524, making or filing a report which the licensee knows to be false, failing to file a record or report that is required by law or knowingly or willfully obstructing or inducing another to obstruct the making or filing of such a record or report.

(p) Failure to report any person the licensee knows, or has reason to know, is in violation of the provisions of this chapter or the regulations of the Board within 30 days after the date the licensee knows or has reason to know of the violation.

(q) Failure by a licensee or applicant to report in writing, within 30 days, any criminal action taken or conviction obtained against the licensee or applicant, other than a minor traffic violation, in this State or any other state or by the Federal Government, a branch of



1 the Armed Forces of the United States or any local or federal
2 jurisdiction of a foreign country.

3 (r) Engaging in any act that is unsafe in accordance with
4 regulations adopted by the Board.

5 (s) Failure to comply with the provisions of NRS 629.515.

6 (t) Failure to supervise adequately a medical assistant pursuant
7 to the regulations of the Board.

8 (u) Failure to obtain any training required by the Board pursuant
9 to NRS 633.473.

10 (v) Failure to comply with the provisions of NRS 633.6955.

11 (w) Failure to comply with the provisions of NRS 453.163,
12 453.164, 453.226, 639.23507, 639.2391 to 639.23916, inclusive,
13 **and section 7 of this act** and any regulations adopted by the State
14 Board of Pharmacy pursuant thereto.

15 (x) Fraudulent, illegal, unauthorized or otherwise inappropriate
16 prescribing, administering or dispensing of a controlled substance
17 listed in schedule II, III or IV.

18 (y) Failure to comply with the provisions of NRS 454.217 or
19 629.086.

20 2. As used in this section, "investigational drug or biological
21 product" has the meaning ascribed to it in NRS 454.351.

22 **Sec. 5.** NRS 635.130 is hereby amended to read as follows:

23 635.130 1. The Board, after notice and a hearing as required
24 by law, and upon any cause enumerated in subsection 2, may take
25 one or more of the following disciplinary actions:

26 (a) Deny an application for a license or refuse to renew a
27 license.

28 (b) Suspend or revoke a license.

29 (c) Place a licensee on probation.

30 (d) Impose a fine not to exceed \$5,000.

31 2. The Board may take disciplinary action against a licensee for
32 any of the following causes:

33 (a) The making of a false statement in any affidavit required of
34 the applicant for application, examination or licensure pursuant to
35 the provisions of this chapter.

36 (b) Lending the use of the holder's name to an unlicensed
37 person.

38 (c) If the holder is a podiatric physician, permitting an
39 unlicensed person in his or her employ to practice as a podiatry
40 hygienist.

41 (d) Habitual indulgence in the use of alcohol or any controlled
42 substance which impairs the intellect and judgment to such an extent
43 as in the opinion of the Board incapacitates the holder in the
44 performance of his or her professional duties.

45 (e) Conviction of a crime involving moral turpitude.



(f) Conviction of violating any of the provisions of NRS 616D.200, 616D.220, 616D.240 or 616D.300 to 616D.440, inclusive.

(g) Conduct which in the opinion of the Board disqualifies the licensee to practice with safety to the public.

(h) The commission of fraud by or on behalf of the licensee regarding his or her license or practice.

(i) Gross incompetency.

(j) Affliction of the licensee with any mental or physical disorder which seriously impairs his or her competence as a podiatric physician or podiatry hygienist.

(k) False representation by or on behalf of the licensee regarding his or her practice.

(l) Unethical or unprofessional conduct.

(m) Failure to comply with the requirements of subsection 1 of NRS 635.118.

(n) Willful or repeated violations of this chapter or regulations adopted by the Board.

(o) Willful violation of the regulations adopted by the State Board of Pharmacy.

(p) Knowingly procuring or administering a controlled substance or a dangerous drug as defined in chapter 454 of NRS that is not approved by the United States Food and Drug Administration, unless the unapproved controlled substance or dangerous drug:

(1) Was procured through a retail pharmacy licensed pursuant to chapter 639 of NRS;

(2) Was procured through a Canadian pharmacy which is licensed pursuant to chapter 639 of NRS and which has been recommended by the State Board of Pharmacy pursuant to subsection 4 of NRS 639.2328; or

(3) Is marijuana being used for medical purposes in accordance with chapter 453A of NRS.

(q) Operation of a medical facility, as defined in NRS 449.0151, at any time during which:

(1) The license of the facility is suspended or revoked; or

(2) An act or omission occurs which results in the suspension or revocation of the license pursuant to NRS 449.160.

➤ This paragraph applies to an owner or other principal responsible for the operation of the facility.

(r) Failure to obtain any training required by the Board pursuant to NRS 635.116.

(s) Failure to comply with the provisions of NRS 453.163, 453.164, 453.226, 639.23507 and 639.2391 to 639.23916, inclusive, **and section 7 of this act** and any regulations adopted by the State Board of Pharmacy pursuant thereto.



(t) Fraudulent, illegal, unauthorized or otherwise inappropriate prescribing, administering or dispensing of a controlled substance listed in schedule II, III or IV.

(u) Failure to comply with the provisions of NRS 454.217 or 629.086.

Sec. 6. NRS 636.295 is hereby amended to read as follows:

636.295 The following acts, conduct, omissions, or mental or physical conditions, or any of them, committed, engaged in, omitted, or being suffered by a licensee, constitute sufficient cause for disciplinary action:

1. Affliction of the licensee with any communicable disease likely to be communicated to other persons.

2. Commission by the licensee of a felony relating to the practice of optometry or a gross misdemeanor involving moral turpitude of which the licensee has been convicted and from which he or she has been sentenced by a final judgment of a federal or state court in this or any other state, the judgment not having been reversed or vacated by a competent appellate court and the offense not having been pardoned by executive authority.

3. Conviction of any of the provisions of NRS 616D.200, 616D.220, 616D.240 or 616D.300 to 616D.440, inclusive.

4. Commission of fraud by or on behalf of the licensee in obtaining a license or a renewal thereof, or in practicing optometry thereunder.

5. Habitual drunkenness or addiction to any controlled substance.

6. Gross incompetency.

7. Affliction with any mental or physical disorder or disturbance seriously impairing his or her competency as an optometrist.

8. Making false or misleading representations, by or on behalf of the licensee, with respect to optometric materials or services.

9. Practice by the licensee, or attempting or offering so to do, while in an intoxicated condition.

10. Perpetration of unethical or unprofessional conduct in the practice of optometry.

11. Knowingly procuring or administering a controlled substance or a dangerous drug as defined in chapter 454 of NRS that is not approved by the United States Food and Drug Administration, unless the unapproved controlled substance or dangerous drug:

(a) Was procured through a retail pharmacy licensed pursuant to chapter 639 of NRS;

(b) Was procured through a Canadian pharmacy which is licensed pursuant to chapter 639 of NRS and which has been



recommended by the State Board of Pharmacy pursuant to subsection 4 of NRS 639.2328; or

(c) Is marijuana being used for medical purposes in accordance with chapter 453A of NRS.

12. Any violation of the provisions of this chapter or any regulations adopted pursuant thereto.

13. Operation of a medical facility, as defined in NRS 449.0151, at any time during which:

(a) The license of the facility is suspended or revoked; or

(b) An act or omission occurs which results in the suspension or revocation of the license pursuant to NRS 449.160.

➔ This subsection applies to an owner or other principal responsible for the operation of the facility.

14. Failure to obtain any training required by the Board pursuant to NRS 636.2881.

15. Failure to comply with the provisions of NRS 453.163, 453.164, 453.226, 639.23507, 639.2391 to 639.23916, inclusive, **and section 7 of this act** and any regulations adopted by the State Board of Pharmacy pursuant thereto.

16. Fraudulent, illegal, unauthorized or otherwise inappropriate prescribing, administering or dispensing of a controlled substance listed in schedule II, III or IV.

Sec. 7. Chapter 639 of NRS is hereby amended by adding thereto a new section to read as follows:

1. Except as otherwise provided in this subsection, a prescription for a controlled substance must be given to a pharmacy by electronic transmission in accordance with the regulations adopted by the Board. The requirements of this subsection do not apply to a prescription:

(a) Issued by a veterinarian;

(b) Issued under circumstances prescribed by regulation of the Board where:

(1) Electronic transmission is unavailable due to technologic or electronic failure; or

(2) The drug will be dispensed at a pharmacy located outside of this State;

(c) Issued by a practitioner who will also dispense the drug;

(d) That includes, without limitation, information that is not supported by the program for electronically transmitting prescriptions prescribed by the National Council for Prescription Drug Programs or its successor organization or, if that entity ceases to exist, a program designated by the Board;

(e) For which electronic prescribing is prohibited by federal law;

(f) That is not issued for a specific patient;



- (g) Issued pursuant to a protocol for research;
(h) Issued by a practitioner who has received a waiver from the Board pursuant to subsection 2; or
(i) Issued under circumstances in which the practitioner determines that:

(1) The patient is unable to obtain the drug in a timely manner if the prescription is given by electronic transmission; and

(2) Delay will adversely affect the patient's medical condition.

2. The Board may exempt a practitioner from the requirements of subsection 1 for not more than 1 year if the Board determines that the practitioner is unable to give a prescription to a pharmacy by electronic transmission because of economic hardship, technological limitations that are not within the control of the practitioner or other exceptional circumstances.

3. A prescription for a controlled substance given to a pharmacy by a means other than electronic transmission under the conditions prescribed in subsection 1 or 2 must be given:

- (a) Directly from the practitioner to a pharmacist;
(b) Indirectly by means of an order or written prescription signed by the practitioner;
(c) By an order transmitted orally by an agent of the practitioner; or
(d) By transmission using a facsimile machine.

4. This section must not be construed to require a pharmacist to:

- (a) Verify that a prescription that is given by means other than electronic transmission meets the requirements of subsection 1; or
(b) Require a practitioner to indicate in a prescription for a controlled substance given to a pharmacy by means other than electronic transmission under the conditions prescribed in subsection 1 or 2 the circumstances authorizing the alternative means of delivery.

5. If the Board determines that a person has violated any provision of this section or any regulations adopted pursuant thereto, the Board may:

(a) Issue and serve on the person an order to cease and desist the conduct, which must include, without limitation, the telephone number to contact the Board.

(b) Issue a citation to the person. A citation issued pursuant to this subsection must be in writing, describe with particularity the nature of the violation and inform the person of the provisions of this subsection. Each activity in which the person is engaged constitutes a separate offense for which a separate citation may be issued. To appeal a citation, the person must submit a written



1 *request for a hearing to the Board not later than 30 days after the*
2 *date of issuance of the citation.*

3 *(c) Assess against the person an administrative fine of not*
4 *more than \$5,000.*

5 *(d) Impose any combination of the penalties set forth in*
6 *paragraphs (a), (b) and (c).*

7 *6. Violation of any provision of this section or any*
8 *regulations adopted pursuant thereto is subject only to the*
9 *administrative penalties described in subsection 5 and any*
10 *professional discipline imposed by the Board.*

11 **Sec. 8.** NRS 639.2353 is hereby amended to read as follows:

12 639.2353 Except as otherwise provided in *section 7 of this act,*
13 *a regulation adopted pursuant thereto or* a regulation adopted
14 pursuant to NRS 453.385 or 639.2357:

15 1. A prescription must be given:

16 (a) Directly from the practitioner to a pharmacist;

17 (b) Indirectly by means of an order *or written prescription*
18 signed by the practitioner;

19 (c) By an oral order transmitted by an agent of the practitioner;
20 or

21 ~~(d) Except as otherwise provided in subsection 5, by~~ *By*
22 *electronic transmission or transmission by a facsimile machine,*
23 *including, without limitation, transmissions made from a facsimile*
24 *machine to another facsimile machine, a computer equipped with a*
25 *facsimile modem to a facsimile machine or a computer to another*
26 *computer, pursuant to the regulations of the Board.*

27 2. A written prescription must contain:

28 (a) Except as otherwise provided in this section, the name and
29 signature of the practitioner, the registration number issued to the
30 practitioner by the Drug Enforcement Administration and the
31 address of the practitioner if that address is not immediately
32 available to the pharmacist;

33 (b) The classification of his or her license;

34 (c) The name and date of birth of the patient, and the address of
35 the patient if not immediately available to the pharmacist;

36 (d) The name, strength and quantity of the drug prescribed and
37 the number of days that the drug is to be used, beginning on the day
38 on which the prescription is filled;

39 (e) The symptom or purpose for which the drug is prescribed, if
40 included by the practitioner pursuant to NRS 639.2352;

41 (f) Directions for use, including, without limitation, the dose of
42 the drug prescribed, the route of administration and the number of
43 refills authorized, if applicable;

44 (g) The code established in the International Classification of
45 Diseases, Tenth Revision, Clinical Modification, adopted by the



1 National Center for Health Statistics and the Centers for Medicare
2 and Medicaid Services, or the code used in any successor
3 classification system adopted by the National Center for Health
4 Statistics and the Centers for Medicare and Medicaid Services, that
5 corresponds to the diagnosis for which the controlled substance was
6 prescribed; and

7 (h) The date of issue.

8 3. The directions for use must be specific in that they indicate
9 the portion of the body to which the medication is to be applied or,
10 if to be taken into the body by means other than orally, the orifice or
11 canal of the body into which the medication is to be inserted or
12 injected.

13 4. Each written prescription must be written in such a manner
14 that any registered pharmacist would be able to dispense it. A
15 prescription must be written in Latin or English and may include
16 any character, figure, cipher or abbreviation which is generally used
17 by pharmacists and practitioners in the writing of prescriptions.

18 ~~{5.—A prescription for a controlled substance must not be given~~
19 ~~by electronic transmission or transmission by a facsimile machine~~
20 ~~unless authorized by federal law and NRS 439.581 to 439.595,~~
21 ~~inclusive, and the regulations adopted pursuant thereto.~~

22 —6.} 5. A prescription that is given by electronic transmission is
23 not required to contain the signature of the practitioner if:

24 (a) It contains a facsimile signature, security code or other mark
25 that uniquely identifies the practitioner;

26 (b) A voice recognition system, biometric identification
27 technique or other security system approved by the Board is used to
28 identify the practitioner; or

29 (c) It complies with the provisions of NRS 439.581 to 439.595,
30 inclusive, and the regulations adopted pursuant thereto.

31 **Sec. 9.** NRS 639.2583 is hereby amended to read as follows:

32 639.2583 1. Except as otherwise provided in this section, if a
33 practitioner has prescribed a:

34 (a) Drug by brand name and the practitioner has not indicated,
35 by a method set forth in subsection 5, that a substitution is
36 prohibited, the pharmacist who fills or refills the prescription shall
37 dispense, in substitution, another drug which is available to him or
38 her if the other drug:

39 (1) Is less expensive than the drug prescribed by brand name;

40 (2) Is biologically equivalent to the drug prescribed by brand
41 name;

42 (3) Has the same active ingredient or ingredients of the same
43 strength, quantity and form of dosage as the drug prescribed by
44 brand name; and



(4) Is of the same generic type as the drug prescribed by brand name.

(b) Biological product and the practitioner has not indicated, by a method set forth in subsection 5, that a substitution is prohibited, the pharmacist who fills or refills the prescription shall dispense, in substitution, another biological product which is available to him or her if the other biological product:

(1) Is an interchangeable biological product for the biological product prescribed; and

(2) Is less expensive than the biological product prescribed by brand name.

2. If the pharmacist has available to him or her more than one drug or interchangeable biological product that may be substituted for the drug prescribed by brand name or biological product prescribed, the pharmacist shall dispense, in substitution, the least expensive of the drugs or interchangeable biological products that are available to him or her for substitution.

3. Before a pharmacist dispenses a drug or biological product in substitution for a drug prescribed by brand name or biological product prescribed, the pharmacist shall:

(a) Advise the person who presents the prescription that the pharmacist intends to dispense a drug or biological product in substitution; and

(b) Advise the person that he or she may refuse to accept the drug or biological product that the pharmacist intends to dispense in substitution, unless the pharmacist is being paid for the drug by a governmental agency.

4. If a person refuses to accept the drug or biological product that the pharmacist intends to dispense in substitution, the pharmacist shall dispense the drug prescribed by brand name or biological product prescribed, unless the pharmacist is being paid for the drug or biological product by a governmental agency, in which case the pharmacist shall dispense the drug or biological product in substitution.

5. A pharmacist shall not dispense a drug or biological product in substitution for a drug prescribed by brand name or biological product prescribed if the practitioner has indicated that a substitution is prohibited using one or more of the following methods:

(a) By oral communication to the pharmacist at any time before the drug or biological product is dispensed.

(b) By handwriting the words "Dispense as Written" on the form used for the prescription, including, without limitation, any form used for transmitting the prescription from a facsimile machine to another facsimile machine. The pharmacist shall disregard the words "Dispense as Written" if they have been placed on the form used for



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the prescription by preprinting or other mechanical process or by any method other than handwriting.

(c) By including the words "Dispense as Written" in any prescription that is given to the pharmacist by electronic transmission pursuant to **section 7 of this act and** the regulations of the Board or in accordance with NRS 439.581 to 439.595, inclusive, and the regulations adopted pursuant thereto, including, without limitation, an electronic transmission from a computer equipped with a facsimile modem to a facsimile machine or from a computer to another computer pursuant to the regulations of the Board.

6. The provisions of this section also apply to a prescription issued to a person by a practitioner from outside this State if the practitioner has not indicated, by a method set forth in subsection 5, that a substitution is prohibited.

7. The provisions of this section do not apply to:

(a) A prescription drug or biological product that is dispensed to any inpatient of a hospital by an inpatient pharmacy which is associated with that hospital;

(b) A prescription drug that is dispensed to any person by mail order or other common carrier by an Internet pharmacy which is certified by the Board pursuant to NRS 639.23288 and authorized to provide service by mail order or other common carrier pursuant to the provisions of this chapter; or

(c) A prescription drug or biological product that is dispensed to any person by a pharmacist if the substitution:

(1) Would violate the terms of a health care plan that maintains a mandatory, exclusive or closed formulary for its coverage for prescription drugs and biological products; or

(2) Would otherwise make the transaction ineligible for reimbursement by a third party.

Sec. 9.5. NRS 639.310 is hereby amended to read as follows:

639.310 Except as otherwise provided in NRS 639.23916 ~~H~~ **and section 7 of this act**, unless a greater penalty is specified, any person who violates any of the provisions of this chapter is guilty of a misdemeanor.

Sec. 10. NRS 453.256 is hereby amended to read as follows:

453.256 1. ~~{Except as otherwise provided in subsection 2, a substance included in schedule II must not be dispensed without the written prescription of a practitioner.~~

~~—2. A controlled substance included in schedule II may be dispensed without the written prescription of a practitioner only:~~

~~—(a) In an emergency, as defined by regulation of the Board, upon oral prescription of a practitioner, reduced to writing promptly and in any case within 72 hours, signed by the practitioner and filed by the pharmacy.~~



~~(b) Pursuant to an electronic prescription of a practitioner which complies with any regulations adopted by the Board concerning the use of electronic prescriptions.~~

~~(c) Upon the use of a facsimile machine to transmit the prescription for a substance included in schedule II by a practitioner or a practitioner's agent to a pharmacy for:~~

~~(1) Direct administration to a patient by parenteral solution; or~~

~~(2) A resident of a facility for intermediate care or a facility for skilled nursing which is licensed as such by the Division of Public and Behavioral Health of the Department.~~

~~➔ A prescription transmitted by a facsimile machine pursuant to this paragraph must be printed on paper which is capable of being retained for at least 2 years. For the purposes of this section, an electronic prescription or a prescription transmitted by facsimile machine constitutes a written prescription. The pharmacy shall keep prescriptions in conformity with the requirements of NRS 453.246.]~~

A prescription for a controlled substance must be given to a pharmacy in compliance with section 7 of this act. A prescription for a substance included in schedule II must not be refilled.

~~{3. Except when dispensed directly by a practitioner, other than a pharmacy, to an ultimate user, a substance included in schedule III or IV which is a dangerous drug as determined under NRS 454.201, must not be dispensed without a written or oral prescription of a practitioner. The}~~ ***A prescription for a substance included in schedule III or IV which is a dangerous drug as determined under NRS 454.201*** must not be filled or refilled more than 6 months after the date thereof or be refilled more than five times, unless renewed by the practitioner.

~~{4.}~~ **2.** A substance included in schedule V may be distributed or dispensed only for a medical purpose, including medical treatment or authorized research.

~~{5.}~~ **3.** A practitioner may dispense or deliver a controlled substance to or for a person or animal only for medical treatment or authorized research in the ordinary course of his or her profession.

~~{6.}~~ **4.** No civil or criminal liability or administrative sanction may be imposed on a pharmacist for action taken in good faith in reliance on a reasonable belief that an order purporting to be a prescription was issued by a practitioner in the usual course of professional treatment or in authorized research.

~~{7.}~~ **5.** An individual practitioner may not dispense a substance included in schedule II, III or IV for the practitioner's own personal use except in a medical emergency.



~~18.1~~ 6. A person who violates this section is guilty of a category E felony and shall be punished as provided in NRS 193.130.

~~19.1~~ 7. As used in this section ~~1:~~
~~(a) "Facsimile machine" means a device which sends or receives a reproduction or facsimile of a document or photograph which is transmitted electronically or telephonically by telecommunications lines.~~

~~(b) "Medical" , "medical treatment" includes dispensing or administering a narcotic drug for pain, whether or not intractable.~~

~~((c) "Parenteral solution" has the meaning ascribed to it in NRS 639.0105.)~~

Sec. 11. NRS 453.385 is hereby amended to read as follows:

453.385 1. Each prescription for a controlled substance must comply with the regulations of the Board adopted pursuant to subsection 2.

2. The Board shall, by regulation, adopt requirements for:

(a) The form and content of a prescription for a controlled substance. The requirements may vary depending upon the schedule of the controlled substance.

(b) Transmitting a prescription for a controlled substance to a pharmacy. The requirements may vary depending upon the schedule of the controlled substance.

(c) The form and contents of an order for a controlled substance given for a patient in a medical facility and the requirements for keeping records of such orders.

3. Except as otherwise provided in this subsection, the regulations adopted pursuant to subsection 2 must:

(a) Ensure compliance with, but may be more stringent than required by, applicable federal law governing controlled substances and the rules, regulations and orders of any federal agency administering such law. The regulations adopted pursuant to paragraph (b) of subsection 2 for the electronic transmission or transmission by a facsimile machine of a prescription for a controlled substance must not be more stringent than federal law governing the electronic transmission or transmission by a facsimile machine of a prescription for a controlled substance or the rules, regulations or orders of any federal agency administering such law; and

(b) Be consistent with the provisions of NRS 439.581 to 439.595, inclusive, *and section 7 of this act* and the regulations adopted pursuant thereto.

Sec. 12. (Deleted by amendment.)

Sec. 13. This act becomes effective:



- 1 1. Upon passage and approval for the purpose of adopting any
- 2 regulations and performing any other preparatory administrative
- 3 tasks necessary to carry out the provisions of this act; and
- 4 2. On January 1, 2021, for all other purposes.

