

Amendment No. 509

Assembly Amendment to Assembly Bill No. 239	(BDR 54-703)
<b>Proposed by:</b> Assembly Committee on Commerce and Labor	
<b>Amends:</b> Summary: Yes Title: Yes Preamble: No Joint Sponsorship: No Digest: Yes	

ASSEMBLY ACTION				Initial and Date	SENATE ACTION				Initial and Date
Adopted	<input type="checkbox"/>	Lost	<input type="checkbox"/>	_____	Adopted	<input type="checkbox"/>	Lost	<input type="checkbox"/>	_____
Concurred In	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____	Concurred In	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____
Receded	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____	Receded	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____

EXPLANATION: Matter in (1) *blue bold italics* is new language in the original bill; (2) variations of green bold underlining is language proposed to be added in this amendment; (3) ~~red strikethrough~~ is deleted language in the original bill; (4) ~~purple double strikethrough~~ is language proposed to be deleted in this amendment; (5) orange double underlining is deleted language in the original bill proposed to be retained in this amendment.

EWR/RBL



Date: 4/22/2019

A.B. No. 239—Revises provisions governing prescriptions for controlled substances. (BDR 54-703)





ASSEMBLY BILL NO. 239—COMMITTEE ON  
HEALTH AND HUMAN SERVICES

MARCH 5, 2019

Referred to Committee on Commerce and Labor

SUMMARY—Revises provisions ~~governing prescriptions for~~ relating to controlled substances. (BDR 54-703)

FISCAL NOTE: Effect on Local Government: No.  
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 controlled substances; revising requirements concerning the review and investigation of a complaint concerning certain violations relating to controlled substances; requiring certain professional licensing boards that regulate prescriptions for controlled substances or practitioners who issue such prescriptions to develop and disseminate an explanation or technical advisory bulletin concerning certain requirements relating to such prescriptions; clarifying the independent authority of the State Board of Pharmacy to take disciplinary action; revising provisions concerning prescribing controlled substances for the treatment of pain; requiring a system for the maintenance of electronic health records to have certain capabilities; and providing other matters properly relating thereto.

**Legislative Counsel's Digest:**

Existing law requires the Executive Director of a professional licensing board that licenses practitioners who are authorized to prescribe controlled substances to conduct a review and evaluation of any complaint or information indicating that a practitioner has engaged in certain inappropriate activity with regard to a controlled substance listed in schedule II, III or IV. (NRS 630.323, 631.364, 632.352, 633.574, 635.152, 636.338) Sections 1-6 of this bill remove the requirement that such a review and an investigation include requiring the practitioner to attest that he or she has complied with certain requirements concerning the prescription of such controlled substances.

Existing law requires a practitioner, other than a veterinarian, to obtain a patient utilization report from the computerized prescription monitoring program before issuing an initial prescription for a controlled substance listed in schedule II, III or IV or an opioid that is a controlled substance listed in schedule V and at least once every 90 days thereafter for the duration of the course of treatment using the controlled substance. (NRS 639.23507) Existing law additionally requires a practitioner, other than a veterinarian, to meet certain requirements, including performing an evaluation and risk assessment and obtaining informed written consent, before issuing an initial prescription for a controlled substance listed in schedule II, III or IV for the treatment of pain. (NRS 639.23911, 639.23914) Existing law

defines the term “initial prescription” to mean a prescription originated for a new patient of a practitioner, other than a veterinarian, or a new prescription to begin a new course of treatment for an existing patient of a practitioner, other than a veterinarian. (NRS 639.0082) Existing regulations of the State Board of Pharmacy define the term “course of treatment” to mean all treatment of a patient for a particular disease or symptom of a disease. (LCB File No. R047-18, adopted on June 26, 2018) ~~Section 7.3~~ **Section 7.3** of this bill codifies this definition into statute, and **Section 8** of this bill makes a conforming change. **Section 9** of this bill revises requirements concerning the use of a patient utilization report.

**Section 7.6 of this bill provides that certain requirements concerning prescriptions of a controlled substance listed in schedule II, III or IV for the treatment of pain do not apply to prescriptions for the treatment of the pain of a patient who: (1) has been diagnosed with cancer or sickle cell disease or any of its variants; or (2) is receiving hospice or palliative care. Section 7.6 also authorizes a practitioner to obtain informed consent that meets certain guidelines in lieu of obtaining informed consent that meets the statutory requirements for informed consent before issuing an initial prescription for a controlled substance listed in schedule II, III or IV for the treatment of the pain of such a patient.**

Existing law imposes certain limitations on an initial prescription of a controlled substance listed in schedule II, III or IV for the treatment of acute pain. (NRS 639.2391) Existing regulations of the Board define the term “acute pain” to mean pain that has an abrupt onset and is caused by an injury or another cause that is not ongoing. (LCB File No. R047-18) **Section 10** of this bill: (1) codifies that definition into law; and (2) authorizes a practitioner to prescribe an initial prescription of a controlled substance listed in schedule II, III or IV for the treatment of acute pain for a longer amount of time if the practitioner determines that it is medically necessary.

Existing law requires an evaluation and risk assessment to be performed before issuing an initial prescription for a controlled substance listed in schedule II, III or IV for the treatment of pain to include : **(1) a review of the medical history of the patient; (2) a physical examination; (3) obtaining informed written consent to the use of the controlled substance; and (4) a good faith effort to review the medical records of the patient.** (NRS 639.23912) **Section 11 of this bill limits the scope of the review of medical history and physical examination. Sections 10.5 and 11 of this bill additionally eliminate the requirement that informed consent must be in writing. Section 11** ~~of this bill~~ **also limits the applicability of** ~~this requirement~~ **the requirement to make a good faith effort to review the medical records of the patient** to: (1) initial prescriptions that will be for more than 30 days; and (2) medical records that are relevant to the prescription.

**Section 11.5 of this bill requires the State Board of Pharmacy to develop and disseminate to each professional licensing board that licenses a practitioner who is authorized to prescribe controlled substances or make available on the Internet website of the Board an explanation or a technical advisory bulletin to inform those professional licensing boards of requirements concerning prescriptions for controlled substances listed in schedule II, III or IV and to update those explanations or bulletins as necessary. Sections 1-6 require each of those professional licensing boards to develop and disseminate or make available to each licensee who is authorized to prescribe controlled substances a similar explanation or bulletin concerning those requirements and the procedures for imposing disciplinary action upon a licensee who violates those requirements.**

Existing regulations of the Board provide that obtaining informed written consent to the use of a controlled substance listed in schedule II, III or IV for the treatment of pain includes viewing previously obtained informed written consent and discussing the provisions of the informed written consent with the person who provided it. (LCB File No. R047-18) ~~Section 11 codifies that provision in statute.~~ **Section 13** of this bill provides for the removal of ~~those provisions of the~~ **that** regulation. ~~that regulation. adopted by the Board that are codified into law by this bill.~~

Existing law authorizes the State Board of Pharmacy to suspend or revoke a registration to dispense a controlled substance under certain circumstances. (NRS 453.236, 453.241) **Section 12** of this bill clarifies that such authority is not limited by the authority of any other regulatory body to take disciplinary action for the same conduct.

Existing law requires the State Board of Pharmacy and the Investigation Division of the Department of Public Safety to cooperatively develop a computerized program to track prescriptions for controlled substances listed in schedule II, III, IV or V. To the extent that money is available, existing law requires that program to include the ability to integrate the records of patients in the database of the program with the electronic health records of practitioners. (NRS 453.162) If the program includes that ability, section 12.5 of this bill requires any person or entity that provides a system for the maintenance of electronic health records to a practitioner to ensure that the system includes the ability to integrate the records of patients in the database into the practitioner's electronic health records.

Existing law requires a practitioner to consider certain factors before prescribing a controlled substance listed in schedule II, III or IV. (NRS 639.23915) Section 14 of this bill repeals that requirement, and **sections 1-6** of this bill remove references to that requirement.

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

**Section 1.** NRS 630.323 is hereby amended to read as follows:

630.323 1. The Executive Director of the Board or his or her designee shall review and evaluate any complaint or information received from the Investigation Division of the Department of Public Safety or the State Board of Pharmacy, including, without limitation, information provided pursuant to NRS 453.164, or from a law enforcement agency, professional licensing board or any other source indicating that:

(a) A licensee has issued a fraudulent, illegal, unauthorized or otherwise inappropriate prescription for a controlled substance listed in schedule II, III or IV;

(b) A pattern of prescriptions issued by a licensee indicates that the licensee has issued prescriptions in the manner described in paragraph (a); or

(c) A patient of a licensee has acquired, used or possessed a controlled substance listed in schedule II, III or IV in a fraudulent, illegal, unauthorized or otherwise inappropriate manner.

2. If the Executive Director of the Board or his or her designee receives information described in subsection 1 concerning the licensee, the Executive Director or his or her designee must notify the licensee as soon as practicable after receiving the information.

3. A review and evaluation conducted pursuant to subsection 1 must include, without limitation:

(a) A review of relevant information contained in the database of the program established pursuant to NRS 453.162; and

~~(b) [A requirement that the licensee who is the subject of the review and evaluation attest that he or she has complied with the requirements of NRS 639.23507, 639.2391, and 639.23911, and 639.23915, as applicable; and~~

~~—(c)—~~ A request for additional relevant information from the licensee who is the subject of the review and evaluation.

4. If, after a review and evaluation conducted pursuant to subsection 1, the Executive Director or his or her designee determines that a licensee may have issued a fraudulent, illegal, unauthorized or otherwise inappropriate prescription for a controlled substance listed in schedule II, III or IV, the Board must proceed as if a written complaint had been filed against the licensee. If, after conducting an investigation and a hearing in accordance with the provisions of this chapter, the Board determines that the licensee issued a fraudulent, illegal, unauthorized or

otherwise inappropriate prescription, the Board must impose appropriate disciplinary action.

5. When deemed appropriate, the Executive Director of the Board may:

(a) Refer information acquired during a review and evaluation conducted pursuant to subsection 1 to another professional licensing board, law enforcement agency or other appropriate governmental entity for investigation and criminal or administrative proceedings.

(b) Postpone any notification, review or part of such a review required by this section if he or she determines that it is necessary to avoid interfering with any pending administrative or criminal investigation into the suspected fraudulent, illegal, unauthorized or otherwise inappropriate prescribing, dispensing or use of a controlled substance.

6. The Board shall ~~adopt~~ adopt:

(a) Adopt regulations providing for disciplinary action against a licensee for inappropriately prescribing a controlled substance listed in schedule II, III or IV or violating the provisions of NRS 639.2391 to 639.23916, inclusive, and any regulations adopted by the State Board of Pharmacy pursuant thereto. Such disciplinary action must include, without limitation, requiring the licensee to complete additional continuing education concerning prescribing controlled substances listed in schedules II, III and IV.

(b) Develop and disseminate to each physician and physician assistant licensed pursuant to this chapter or make available on the Internet website of the Board an explanation or a technical advisory bulletin to inform those physicians and physician assistants of the requirements of this section and NRS 630.324, 639.23507 and 639.2391 to 639.23916, inclusive, and any regulations adopted pursuant thereto. The Board shall update the explanation or bulletin as necessary to include any revisions to those provisions of law or regulations. The explanation or bulletin must include, without limitation, an explanation of the requirements that apply to specific controlled substances or categories of controlled substances.

**Sec. 2.** NRS 631.364 is hereby amended to read as follows:

631.364 1. The Executive Director of the Board or his or her designee shall review and evaluate any complaint or information received from the Investigation Division of the Department of Public Safety or the State Board of Pharmacy, including, without limitation, information provided pursuant to NRS 453.164, or from a law enforcement agency, professional licensing board or any other source indicating that:

(a) A licensee has issued a fraudulent, illegal, unauthorized or otherwise inappropriate prescription for a controlled substance listed in schedule II, III or IV;

(b) A pattern of prescriptions issued by a licensee indicates that the licensee has issued prescriptions in the manner described in paragraph (a); or

(c) A patient of a licensee has acquired, used or possessed a controlled substance listed in schedule II, III or IV in a fraudulent, illegal, unauthorized or otherwise inappropriate manner.

2. If the Executive Director of the Board or his or her designee receives information described in subsection 1 concerning the licensee, the Executive Director or his or her designee must notify the licensee as soon as practicable after receiving the information.

3. A review and evaluation conducted pursuant to subsection 1 must include, without limitation:

(a) A review of relevant information contained in the database of the program established pursuant to NRS 453.162; and

~~(b) [A requirement that the licensee who is the subject of the review and evaluation attest that he or she has complied with the requirements of NRS 639.22507, 639.2391, and 639.23911, and 639.23915, as applicable; and~~

~~—(c)—~~ A request for additional relevant information from the licensee who is the subject of the review and evaluation.

4. If, after a review and evaluation conducted pursuant to subsection 1, the Executive Director or his or her designee determines that a licensee may have issued a fraudulent, illegal, unauthorized or otherwise inappropriate prescription for a controlled substance listed in schedule II, III or IV, the Board must proceed as if a written complaint had been filed against the licensee. If, after conducting an investigation and a hearing in accordance with the provisions of this chapter, the Board determines that the licensee issued a fraudulent, illegal, unauthorized or otherwise inappropriate prescription, the Board must impose appropriate disciplinary action.

5. When deemed appropriate, the Executive Director of the Board may:

(a) Refer information acquired during a review and evaluation conducted pursuant to subsection 1 to another professional licensing board, law enforcement agency or other appropriate governmental entity for investigation and criminal or administrative proceedings.

(b) Postpone any notification, review or part of such a review required by this section if he or she determines that it is necessary to avoid interfering with any pending administrative or criminal investigation into the suspected fraudulent, illegal, unauthorized or otherwise inappropriate prescribing, dispensing or use of a controlled substance.

6. The Board shall ~~adopt~~ adopt:

(a) Adopt regulations providing for disciplinary action against a licensee for inappropriately prescribing a controlled substance listed in schedule II, III or IV or violating the provisions of NRS 639.2391 to 639.23916, inclusive, and any regulations adopted by the State Board of Pharmacy pursuant thereto. Such disciplinary action must include, without limitation, requiring the licensee to complete additional continuing education concerning prescribing controlled substances listed in schedules II, III and IV.

(b) Develop and disseminate to each dentist licensed pursuant to this chapter or make available on the Internet website of the Board an explanation or a technical advisory bulletin to inform those dentists of the requirements of this section and NRS 631.365, 639.23507 and 639.2391 to 639.23916, inclusive, and any regulations adopted pursuant thereto. The Board shall update the explanation or bulletin as necessary to include any revisions to those provisions of law or regulations. The explanation or bulletin must include, without limitation, an explanation of the requirements that apply to specific controlled substances or categories of controlled substances.

**Sec. 3.** NRS 632.352 is hereby amended to read as follows:

632.352 1. The Executive Director of the Board or his or her designee shall review and evaluate any complaint or information received from the Investigation Division of the Department of Public Safety or the State Board of Pharmacy, including, without limitation, information provided pursuant to NRS 453.164, or from a law enforcement agency, professional licensing board or any other source indicating that:

(a) A licensee has issued a fraudulent, illegal, unauthorized or otherwise inappropriate prescription for a controlled substance listed in schedule II, III or IV;

(b) A pattern of prescriptions issued by a licensee indicates that the licensee has issued prescriptions in the manner described in paragraph (a); or

(c) A patient of a licensee has acquired, used or possessed a controlled substance listed in schedule II, III or IV in a fraudulent, illegal, unauthorized or otherwise inappropriate manner.

2. If the Executive Director of the Board or his or her designee receives information described in subsection 1 concerning the licensee, the Executive Director or his or her designee must notify the licensee as soon as practicable after receiving the information.

3. A review and evaluation conducted pursuant to subsection 1 must include, without limitation:

(a) A review of relevant information contained in the database of the program established pursuant to NRS 453.162; and

~~(b) [A requirement that the licensee who is the subject of the review and evaluation attest that he or she has complied with the requirements of NRS 639.23507, 639.2391, and 639.23911, and 639.23915, as applicable; and~~

~~(c)]~~ A request for additional relevant information from the licensee who is the subject of the review and evaluation.

4. If, after a review and evaluation conducted pursuant to subsection 1, the Executive Director or his or her designee determines that a licensee may have issued a fraudulent, illegal, unauthorized or otherwise inappropriate prescription for a controlled substance listed in schedule II, III or IV, the Board must proceed as if a written complaint had been filed against the licensee. If, after conducting an investigation and a hearing in accordance with the provisions of this chapter, the Board determines that the licensee issued a fraudulent, illegal, unauthorized or otherwise inappropriate prescription, the Board must impose appropriate disciplinary action.

5. When deemed appropriate, the Executive Director of the Board may:

(a) Refer information acquired during a review and evaluation conducted pursuant to subsection 1 to another professional licensing board, law enforcement agency or other appropriate governmental entity for investigation and criminal or administrative proceedings.

(b) Postpone any notification, review or part of such a review required by this section if he or she determines that it is necessary to avoid interfering with any pending administrative or criminal investigation into the suspected fraudulent, illegal, unauthorized or otherwise inappropriate prescribing, dispensing or use of a controlled substance.

6. The Board shall ~~adopt~~ :

(a) Adopt regulations providing for disciplinary action against a licensee for inappropriately prescribing a controlled substance listed in schedule II, III or IV or violating the provisions of NRS 639.2391 to 639.23916, inclusive, and any regulations adopted by the State Board of Pharmacy pursuant thereto. Such disciplinary action must include, without limitation, requiring the licensee to complete additional continuing education concerning prescribing controlled substances listed in schedules II, III and IV.

(b) Develop and disseminate to each advanced practice registered nurse licensed pursuant to NRS 632.237 or make available on the Internet website of the Board an explanation or a technical advisory bulletin to inform those advanced practice registered nurses of the requirements of this section and NRS 632.353, 639.23507 and 639.2391 to 639.23916, inclusive, and any regulations adopted pursuant thereto. The Board shall update the explanation or bulletin as necessary to include any revisions to those provisions of law or regulations. The explanation or bulletin must include, without limitation, an explanation of the requirements that apply to specific controlled substances or categories of controlled substances.



1       **Sec. 4.** NRS 633.574 is hereby amended to read as follows:

2       633.574 1. The Executive Director of the Board or his or her designee shall  
3 review and evaluate any complaint or information received from the Investigation  
4 Division of the Department of Public Safety or the State Board of Pharmacy,  
5 including, without limitation, information provided pursuant to NRS 453.164, or  
6 from a law enforcement agency, professional licensing board or any other source  
7 indicating that:

8       (a) A licensee has issued a fraudulent, illegal, unauthorized or otherwise  
9 inappropriate prescription for a controlled substance listed in schedule II, III or IV;

10       (b) A pattern of prescriptions issued by a licensee indicates that the licensee  
11 has issued prescriptions in the manner described in paragraph (a); or

12       (c) A patient of a licensee has acquired, used or possessed a controlled  
13 substance listed in schedule II, III or IV in a fraudulent, illegal, unauthorized or  
14 otherwise inappropriate manner.

15       2. If the Executive Director of the Board or his or her designee receives  
16 information described in subsection 1 concerning the licensee, the Executive  
17 Director or his or her designee must notify the licensee as soon as practicable after  
18 receiving the information.

19       3. A review and evaluation conducted pursuant to subsection 1 must include,  
20 without limitation:

21       (a) A review of relevant information contained in the database of the program  
22 established pursuant to NRS 453.162; and

23       (b) ~~[A requirement that the licensee who is the subject of the review and~~  
24 ~~evaluation attest that he or she has complied with the requirements of NRS~~  
25 ~~639.23507, 639.2391, and 639.23911, and 639.23915, as applicable; and~~

26 ~~—(c)—~~ A request for additional relevant information from the licensee who is the  
27 subject of the review and evaluation.

28       4. If, after a review and evaluation conducted pursuant to subsection 1, the  
29 Executive Director or his or her designee determines that a licensee may have  
30 issued a fraudulent, illegal, unauthorized or otherwise inappropriate prescription for  
31 a controlled substance listed in schedule II, III or IV, the Board must proceed as if a  
32 written complaint had been filed against the licensee. If, after conducting an  
33 investigation and a hearing in accordance with the provisions of this chapter, the  
34 Board determines that the licensee issued a fraudulent, illegal, unauthorized or  
35 otherwise inappropriate prescription, the Board must impose appropriate  
36 disciplinary action.

37       5. When deemed appropriate, the Executive Director of the Board may:

38       (a) Refer information acquired during a review and evaluation conducted  
39 pursuant to subsection 1 to another professional licensing board, law enforcement  
40 agency or other appropriate governmental entity for investigation and criminal or  
41 administrative proceedings.

42       (b) Postpone any notification, review or part of such a review required by this  
43 section if he or she determines that it is necessary to avoid interfering with any  
44 pending administrative or criminal investigation into the suspected fraudulent,  
45 illegal, unauthorized or otherwise inappropriate prescribing, dispensing or use of a  
46 controlled substance.

47       6. The Board shall ~~[adopt]~~ :

48       (a) Adopt regulations providing for disciplinary action against a licensee for  
49 inappropriately prescribing a controlled substance listed in schedule II, III or IV or  
50 violating the provisions of NRS 639.2391 to 639.23916, inclusive, and any  
51 regulations adopted by the State Board of Pharmacy pursuant thereto. Such  
52 disciplinary action must include, without limitation, requiring the licensee to

complete additional continuing education concerning prescribing controlled substances listed in schedules II, III and IV.

(b) Develop and disseminate to each osteopathic physician and physician assistant licensed pursuant to this chapter or make available on the Internet website of the Board an explanation or a technical advisory bulletin to inform those osteopathic physicians and physician assistants of the requirements of this section and NRS 633.577, 639.23507 and 639.2391 to 639.23916, inclusive, and any regulations adopted pursuant thereto. The Board shall update the explanation or bulletin as necessary to include any revisions to those provisions of law or regulations. The explanation or bulletin must include, without limitation, an explanation of the requirements that apply to specific controlled substances or categories of controlled substances.

**Sec. 5.** NRS 635.152 is hereby amended to read as follows:

635.152 1. The President of the Board or his or her designee shall review and evaluate any complaint or information received from the Investigation Division of the Department of Public Safety or the State Board of Pharmacy, including, without limitation, information provided pursuant to NRS 453.164, or from a law enforcement agency, professional licensing board or any other source indicating that:

(a) A licensee has issued a fraudulent, illegal, unauthorized or otherwise inappropriate prescription for a controlled substance listed in schedule II, III or IV;

(b) A pattern of prescriptions issued by a licensee indicates that the licensee has issued prescriptions in the manner described in paragraph (a); or

(c) A patient of a licensee has acquired, used or possessed a controlled substance listed in schedule II, III or IV in a fraudulent, illegal, unauthorized or otherwise inappropriate manner.

2. If the President of the Board or his or her designee receives information described in subsection 1 concerning the licensee, the President or his or her designee must notify the licensee as soon as practicable after receiving the information.

3. A review and evaluation conducted pursuant to subsection 1 must include, without limitation:

(a) A review of relevant information contained in the database of the program established pursuant to NRS 453.162; and

~~(b) [A requirement that the licensee who is the subject of the review and evaluation attest that he or she has complied with the requirements of NRS 639.23507, 639.2391, and 639.23911, and 639.23915, as applicable; and~~

~~(c)]~~ A request for additional relevant information from the licensee who is the subject of the review and evaluation.

4. If, after a review and evaluation conducted pursuant to subsection 1, the President or his or her designee determines that a licensee may have issued a fraudulent, illegal, unauthorized or otherwise inappropriate prescription for a controlled substance listed in schedule II, III or IV, the Board must proceed as if a written complaint had been filed against the licensee. If, after conducting an investigation and a hearing in accordance with the provisions of this chapter, the Board determines that the licensee issued a fraudulent, illegal, unauthorized or otherwise inappropriate prescription, the Board must impose appropriate disciplinary action.

5. When deemed appropriate, the President of the Board may:

(a) Refer information acquired during a review and evaluation conducted pursuant to subsection 1 to another professional licensing board, law enforcement agency or other appropriate governmental entity for investigation and criminal or administrative proceedings.

(b) Postpone any notification, review or part of such a review required by this section if he or she determines that it is necessary to avoid interfering with any pending administrative or criminal investigation into the suspected fraudulent, illegal, unauthorized or otherwise inappropriate prescribing, dispensing or use of a controlled substance.

6. The Board shall ~~adopt~~ :

(a) Adopt regulations providing for disciplinary action against a licensee for inappropriately prescribing a controlled substance listed in schedule II, III or IV or violating the provisions of NRS 639.2391 to 639.23916, inclusive, and any regulations adopted by the State Board of Pharmacy pursuant thereto. Such disciplinary action must include, without limitation, requiring the licensee to complete additional continuing education concerning prescribing controlled substances listed in schedules II, III and IV.

(b) Develop and disseminate to each podiatric physician licensed pursuant to this chapter or make available on the Internet website of the Board an explanation or a technical advisory bulletin to inform those podiatric physicians of the requirements of this section and NRS 635.153, 639.23507 and 639.2391 to 639.23916, inclusive, and any regulations adopted pursuant thereto. The Board shall update the explanation or bulletin as necessary to include any revisions to those provisions of law or regulations. The explanation or bulletin must include, without limitation, an explanation of the requirements that apply to specific controlled substances or categories of controlled substances.

**Sec. 6.** NRS 636.338 is hereby amended to read as follows:

636.338 1. The Executive Director of the Board or his or her designee shall review and evaluate any complaint or information received from the Investigation Division of the Department of Public Safety or the State Board of Pharmacy, including, without limitation, information provided pursuant to NRS 453.164, or from a law enforcement agency, professional licensing board or any other source indicating that:

(a) A licensee has issued a fraudulent, illegal, unauthorized or otherwise inappropriate prescription for a controlled substance listed in schedule II, III or IV;

(b) A pattern of prescriptions issued by a licensee indicates that the licensee has issued prescriptions in the manner described in paragraph (a); or

(c) A patient of a licensee has acquired, used or possessed a controlled substance listed in schedule II, III or IV in a fraudulent, illegal, unauthorized or otherwise inappropriate manner.

2. If the Executive Director of the Board or his or her designee receives information described in subsection 1 concerning the licensee, the Executive Director or his or her designee must notify the licensee as soon as practicable after receiving the information.

3. A review and evaluation conducted pursuant to subsection 1 must include, without limitation:

(a) A review of relevant information contained in the database of the program established pursuant to NRS 453.162; and

~~(b) [A requirement that the licensee who is the subject of the review and evaluation attest that he or she has complied with the requirements of NRS 639.23507, 639.2391, and 639.23911, and 639.23915, as applicable; and~~

~~(c) [A request for additional relevant information from the licensee who is the subject of the review and evaluation.~~

4. If, after a review and evaluation conducted pursuant to subsection 1, the Executive Director or his or her designee determines that a licensee may have issued a fraudulent, illegal, unauthorized or otherwise inappropriate prescription for a controlled substance listed in schedule II, III or IV, the Board must proceed as if a

1 written complaint had been filed against the licensee. If, after conducting an  
2 investigation and a hearing in accordance with the provisions of this chapter, the  
3 Board determines that the licensee issued a fraudulent, illegal, unauthorized or  
4 otherwise inappropriate prescription, the Board must impose appropriate  
5 disciplinary action.

6 5. When deemed appropriate, the Executive Director of the Board may:

7 (a) Refer information acquired during a review and evaluation conducted  
8 pursuant to subsection 1 to another professional licensing board, law enforcement  
9 agency or other appropriate governmental entity for investigation and criminal or  
10 administrative proceedings.

11 (b) Postpone any notification, review or part of such a review required by this  
12 section if he or she determines that it is necessary to avoid interfering with any  
13 pending administrative or criminal investigation into the suspected fraudulent,  
14 illegal, unauthorized or otherwise inappropriate prescribing, dispensing or use of a  
15 controlled substance.

16 6. The Board shall ~~adopt~~:

17 (a) Adopt regulations providing for disciplinary action against a licensee for  
18 inappropriately prescribing a controlled substance listed in schedule II, III or IV or  
19 violating the provisions of NRS 639.2391 to 639.23916, inclusive, and any  
20 regulations adopted by the State Board of Pharmacy pursuant thereto. Such  
21 disciplinary action must include, without limitation, requiring the licensee to  
22 complete additional continuing education concerning prescribing controlled  
23 substances listed in schedules II, III and IV.

24 (b) Develop and disseminate to each optometrist who is certified to prescribe  
25 and administer therapeutic pharmaceutical agents pursuant to NRS 636.288 or  
26 make available on the Internet website of the Board an explanation or a technical  
27 advisory bulletin to inform those optometrists of the requirements of this section  
28 and NRS 636.339, 639.23507 and 639.2391 to 639.23916, inclusive, and any  
29 regulations adopted pursuant thereto. The Board shall update the explanation or  
30 bulletin as necessary to include any revisions to those provisions of law or  
31 regulations. The explanation or bulletin must include, without limitation, an  
32 explanation of the requirements that apply to specific controlled substances or  
33 categories of controlled substances.

34 Sec. 7. Chapter 639 of NRS is hereby amended by adding thereto ~~the new~~  
35 section to read as follows: the provisions set forth as sections 7.3 and 7.6 of this  
36 act.

37 Sec. 7.3. "Course of treatment" means all treatment of a patient for a  
38 particular disease or symptom of a disease, including, without limitation, a new  
39 treatment initiated by any practitioner, other than a veterinarian, for a disease or  
40 symptom for which the patient was previously receiving treatment.

41 Sec. 7.6. 1. Except as otherwise provided in this section, the provisions of  
42 NRS 639.2391 to 639.23916, inclusive, do not apply to any prescription for a  
43 controlled substance listed in schedule II, III or IV for the treatment of the pain  
44 of a patient who:

45 (a) Has been diagnosed with cancer or sickle cell disease or any of its  
46 variants; or

47 (b) Is receiving hospice care or palliative care.

48 2. Before issuing an initial prescription for a controlled substance listed in  
49 schedule II, III or IV for the treatment of the pain of a patient described in  
50 subsection 1, a practitioner must obtain informed consent to the use of the  
51 controlled substance that meets the requirements of subsection 2 of NRS  
52 639.23912 or any applicable guidelines or standards for informed consent  
53 prescribed by:

(a) If the patient is receiving hospice or palliative care, the Centers for Medicare and Medicaid Services of the United States Department of Health and Human Services;

(b) If the patient has been diagnosed with cancer, the American Society of Clinical Oncology or its successor organization or, if that organization ceases to exist, a similar organization designated by regulation of the Board; or

(c) If the patient has been diagnosed with sickle cell disease or any of its variants, the National Heart, Lung and Blood Institute or its successor organization or, if that organization ceases to exist, a similar organization designated by regulation of the Board.

Sec. 8. NRS 639.001 is hereby amended to read as follows:

639.001 As used in this chapter, unless the context otherwise requires, the words and terms defined in NRS 639.0015 to 639.016, inclusive, *and section ~~7.3~~ of this act* have the meanings ascribed to them in those sections.

Sec. 9. NRS 639.23507 is hereby amended to read as follows:

639.23507 1. ~~Except as otherwise provided in subsection 2, a~~ practitioner, other than a veterinarian, shall, before issuing an initial prescription for a controlled substance listed in schedule II, III or IV or an opioid that is a controlled substance listed in schedule V and at least once every 90 days thereafter for the duration of the course of treatment using the controlled substance, obtain a patient utilization report regarding the patient from the computerized program established by the Board and the Investigation Division of the Department of Public Safety pursuant to NRS 453.162. The practitioner shall:

(a) Review the patient utilization report ; ~~to assess whether the prescription for the controlled substance is medically necessary;~~ and

(b) Determine whether the patient has been issued another prescription for the same controlled substance that provides for ongoing treatment using the controlled substance. If the practitioner determines from the patient utilization report or from any other source that the patient has been issued such a prescription, the practitioner shall not prescribe the controlled substance ~~unless the practitioner determines that issuing the prescription is medically necessary.~~

2. A practitioner, other than a veterinarian, may issue a prescription for a controlled substance listed in schedule II, III or IV or an opioid that is a controlled substance listed in schedule V for the treatment of a patient who has been diagnosed with cancer or sickle cell disease or who is receiving hospice or palliative care without complying with the requirements of subsection 1 if the practitioner determines that obtaining a patient utilization report will unreasonably delay care of the patient. A practitioner who issues a prescription pursuant to this subsection must obtain a patient utilization report as described in subsection 1 as soon as practicable.

3. If a practitioner who attempts to obtain a patient utilization report as required by subsection 1 fails to do so because the computerized program is unresponsive or otherwise unavailable, the practitioner:

(a) Shall be deemed to have complied with subsection 1 if the practitioner documents the attempt and failure in the medical record of the patient.

(b) Is not liable for the failure.

~~3. 4.~~ 4. The Board shall adopt regulations to provide alternative methods of compliance with subsection 1 for a physician while he or she is providing service in a hospital emergency department. The regulations must include, without limitation, provisions that allow a hospital to designate members of hospital staff to act as delegates for the purposes of accessing the database of the computerized program and obtaining patient utilization reports from the computerized program on behalf of such a physician.

**Sec. 10.** NRS 639.2391 is hereby amended to read as follows:

639.2391 1. If a practitioner, other than a veterinarian, prescribes or dispenses to a patient for the treatment of pain a quantity of controlled substance that exceeds the amount prescribed by this subsection, the practitioner must document in the medical record of the patient the reasons for prescribing that quantity. A practitioner shall document the information required by this subsection if the practitioner prescribes for or dispenses for the treatment of pain:

(a) In any period of 365 consecutive days, a larger quantity of a controlled substance listed in schedule II, III or IV than will be used in 365 days if the patient adheres to the dose prescribed; or

(b) At any one time, a larger quantity of a controlled substance listed in schedule II, III or IV than will be used in 90 days if the patient adheres to the dose prescribed.

2. ~~1A~~ *Unless the practitioner determines that the prescription is medically necessary,* a practitioner, other than a veterinarian, shall not issue an initial prescription of a controlled substance listed in schedule II, III or IV for the treatment of acute pain that prescribes:

(a) An amount of the controlled substance that is intended to be used for more than 14 days; and

(b) If the controlled substance is an opioid and a prescription for an opioid has never been issued to the patient or the most recent prescription issued to the patient for an opioid was issued more than 19 days before the date of the initial prescription for the treatment of acute pain, a dose of the controlled substance that exceeds 90 morphine milligram equivalents per day. For the purposes of this paragraph, the daily dose of a controlled substance must be calculated in accordance with the most recent guidelines prescribed by the Centers for Disease Control and Prevention of the United States Department of Health and Human Services.

3. *As used in this section, "acute pain" means pain that has an abrupt onset and is caused by injury or another cause that is not ongoing. The term does not include chronic pain or pain that is being treated as part of care for cancer, palliative care, hospice care or other end-of-life care.*

**Sec. 10.5.** NRS 639.23911 is hereby amended to read as follows:

639.23911 1. Before issuing an initial prescription for a controlled substance listed in schedule II, III or IV for the treatment of pain, a practitioner, other than a veterinarian, must:

(a) Have established a bona fide relationship, as described in subsection 4 of NRS 639.235, with the patient;

(b) Perform an evaluation and risk assessment of the patient that meets the requirements of subsection 1 of NRS 639.23912;

(c) Establish a preliminary diagnosis of the patient and a treatment plan tailored toward treating the pain of the patient and the cause of that pain;

(d) Document in the medical record of the patient the reasons for prescribing the controlled substance instead of an alternative treatment that does not require the use of a controlled substance; and

(e) Obtain informed ~~written~~ consent to the use of the controlled substance that meets the requirements of subsection 2 of NRS 639.23912 from:

(1) The patient, if the patient is 18 years of age or older or legally emancipated and has the capacity to give such consent;

(2) The parent or guardian of a patient who is less than 18 years of age and not legally emancipated; or

(3) The legal guardian of a patient of any age who has been adjudicated mentally incapacitated.



2. If a practitioner, other than a veterinarian, prescribes a controlled substance listed in schedule II, III or IV for the treatment of pain, the practitioner shall not issue more than one additional prescription that increases the dose of the controlled substance unless the practitioner meets with the patient, in person or using telehealth, to reevaluate the treatment plan established pursuant to paragraph (c) of subsection 1.

**Sec. 11.** NRS 639.23912 is hereby amended to read as follows:

639.23912 1. An evaluation and risk assessment of a patient conducted pursuant to paragraph (b) of subsection 1 of NRS 639.23911 must include, without limitation:

(a) Obtaining and reviewing a relevant medical history of the patient.

(b) Conducting a physical examination of the patient ~~that is~~ directed to the source of the patient's pain and within the scope of practice of the practitioner.

(c) ~~Making~~ If the prescription is for a quantity of a controlled substance listed in schedule II, III or IV that is intended to be used in not less than 30 days:

(1) Making a good faith effort to obtain and review ~~the~~ any medical records of the patient from any other provider of health care who has provided care to the patient ~~[The practitioner shall document]~~ that are relevant to the prescription; and

(2) Documenting efforts to obtain such medical records and the conclusions from reviewing any such medical records in the medical record of the patient.

(d) Assessing the mental health and risk of abuse, dependency and addiction of the patient using methods supported by peer-reviewed scientific research and validated by a nationally recognized organization.

2. The informed ~~written~~ consent obtained pursuant to paragraph (e) of subsection 1 of NRS 639.23911 must include ~~[, without limitation,]~~ , where applicable, information concerning:

(a) The potential risks and benefits of treatment using the controlled substance, including if a form of the controlled substance that is designed to deter abuse is available, the risks and benefits of using that form;

(b) Proper use of the controlled substance;

(c) Any alternative means of treating the symptoms of the patient and the cause of such symptoms;

(d) The important provisions of the treatment plan established for the patient pursuant to paragraph (c) of subsection 1 of NRS 639.23911 in a clear and simple manner;

(e) The risks of dependency, addiction and overdose during treatment using the controlled substance;

(f) Methods to safely store and legally dispose of the controlled substance;

(g) The manner in which the practitioner will address requests for refills of the prescription, including, without limitation, an explanation of the provisions of NRS 639.23913, if applicable;

(h) If the patient is a woman between 15 and 45 years of age, the risk to a fetus of chronic exposure to controlled substances during pregnancy, including, without limitation, the risks of fetal dependency on the controlled substance and neonatal abstinence syndrome;

(i) If the controlled substance is an opioid, the availability of an opioid antagonist, as defined in NRS 453C.040, without a prescription; and

(j) If the patient is an unemancipated minor, the risks that the minor will abuse or misuse the controlled substance or divert the controlled substance for use by another person and ways to detect such abuse, misuse or diversion.

3. ~~[In addition to other methods of obtaining informed written consent, a practitioner shall be deemed to have obtained informed written consent that meets the requirements of paragraph (c) of subsection 1 of NRS 639.23911 if the practitioner:~~

~~— (a) Views informed written consent to the use of the controlled substance that meets the requirements of subsection 2 previously given by the patient, parent of the patient or legal guardian of the patient, as applicable, and which is stored on a database maintained by the practitioner or a group of practitioners with which the practitioner is associated; and~~

~~— (b) Immediately before prescribing the controlled substance:~~

~~— (1) Discusses the provisions of the informed written consent described in paragraph (a) with the patient, parent of the patient or legal guardian of the patient, as applicable;~~

~~— (2) Allows the patient, parent or guardian to ask questions about those provisions; and~~

~~— (3) Answers any such questions.] A practitioner shall document a conversation in which a patient provided informed consent that meets the requirements of subsection 2 in the medical record of the patient. If a patient provides informed written consent, the practitioner must include the document on which the informed consent is recorded in the medical record of the patient.~~

Sec. 11.5. NRS 639.23916 is hereby amended to read as follows:

639.23916 1. The Board may adopt any regulations necessary or convenient to enforce the provisions of NRS 639.23507 and 639.2391 to 639.23916, inclusive. Such regulations may impose additional requirements concerning the prescription of a controlled substance listed in schedule II, III or IV by a practitioner, other than a veterinarian, for the treatment of pain.

2. The Board shall develop and disseminate to each professional licensing board that licenses a practitioner, other than a veterinarian, or make available on the Internet website of the Board an explanation or a technical advisory bulletin to inform those professional licensing boards of the requirements of NRS 639.23507 and 639.2391 to 639.23916, inclusive, and any regulations adopted pursuant thereto. The Board shall update the explanation or bulletin as necessary to include any revisions to those provisions of law or regulations. The explanation or bulletin must include, without limitation, an explanation of the requirements that apply to specific controlled substances or categories of controlled substances.

3. A practitioner who violates any provision of NRS 639.23507 and 639.2391 to 639.23916, inclusive, or any regulations adopted pursuant thereto is:

(a) Not guilty of a misdemeanor; and

(b) Subject to professional discipline.

Sec. 12. Chapter 453 of NRS is hereby amended by adding thereto a new section to read as follows:

The authority of the Board to take disciplinary action to enforce the provisions of this chapter is not limited by the authority of any other regulatory body that may be authorized or required to take disciplinary action for the same conduct with respect to any license, registration, certificate or other professional designation issued and regulated by that regulatory body.

Sec. 12.5. NRS 453.162 is hereby amended to read as follows:

453.162 1. The Board and the Division shall cooperatively develop a computerized program to track each prescription for a controlled substance listed in schedule II, III, IV or V that is filled by a pharmacy that is registered with the Board or that is dispensed by a practitioner who is registered with the Board. The program must:



(a) Be designed to provide information regarding:

(1) The inappropriate use by a patient of controlled substances listed in schedules II, III, IV or V to pharmacies, practitioners and appropriate state and local governmental agencies, including, without limitation, law enforcement agencies and occupational licensing boards, to prevent the improper or illegal use of those controlled substances; and

(2) Statistical data relating to the use of those controlled substances that is not specific to a particular patient.

(b) Be administered by the Board, the Investigation Division, the Division of Public and Behavioral Health of the Department and various practitioners, representatives of professional associations for practitioners, representatives of occupational licensing boards and prosecuting attorneys selected by the Board and the Investigation Division.

(c) Not infringe on the legal use of a controlled substance for the management of severe or intractable pain.

(d) Include the contact information of each person who is required to access the database of the program pursuant to NRS 453.164, including, without limitation:

(1) The name of the person;

(2) The physical address of the person;

(3) The telephone number of the person; and

(4) If the person maintains an electronic mail address, the electronic mail address of the person.

(e) Include, for each prescription of a controlled substance listed in schedule II, III, IV or V:

(1) The fewest number of days necessary to consume the quantity of the controlled substance dispensed to the patient if the patient consumes the maximum dose of the controlled substance authorized by the prescribing practitioner;

(2) Each state in which the patient to whom the controlled substance was prescribed has previously resided or filled a prescription for a controlled substance listed in schedule II, III, IV or V; and

(3) The code established in the International Classification of Diseases, Tenth Revision, Clinical Modification, adopted by the National Center for Health Statistics and the Centers for Medicare and Medicaid Services, or the code used in any successor classification system adopted by the National Center for Health Statistics and the Centers for Medicare and Medicaid Services, that corresponds to the diagnosis for which the controlled substance was prescribed.

(f) To the extent that money is available, include:

(1) A means by which a practitioner may designate in the database of the program that he or she suspects that a patient is seeking a prescription for a controlled substance for an improper or illegal purpose. If the Board reviews the designation and determines that such a designation is warranted, the Board shall inform pharmacies, practitioners and appropriate state agencies that the patient is seeking a prescription for a controlled substance for an improper or illegal purpose as described in subparagraph (1) of paragraph (a).

(2) The ability to integrate the records of patients in the database of the program with the electronic health records of practitioners.

2. If the Board includes in the program the ability to integrate the records of patients in the database of the program with the electronic health records of practitioners:

(a) The Board may adopt any regulations necessary to carry out the integration; and

(b) Any person or entity that provides a system for the maintenance of electronic health records to a practitioner must ensure that the system includes, as a function of the system, the ability to integrate the records of patients in the database of the program into the electronic health records of the practitioner.

3. The Board, the Division and each employee thereof are immune from civil and criminal liability for any action relating to the collection, maintenance and transmission of information pursuant to this section and NRS 453.163 to 453.1645, inclusive, if a good faith effort is made to comply with applicable laws and regulations.

~~3.~~ 4. The Board and the Division may apply for any available grants and accept any gifts, grants or donations to assist in developing and maintaining the program required by this section.

5. As used in this section, "electronic health record" has the meaning ascribed to it in 42 U.S.C. § 17921.

**Sec. 13.** Sections 2, 3 and 4 of the regulation adopted by the State Board of Pharmacy, LCB File No. R047-18, are hereby declared to be void and unenforceable on ~~January 1, 2020,~~ the effective date of this act. In preparing supplements to the Nevada Administrative Code on or after ~~January 1, 2020,~~ the effective date of this act, the Legislative Counsel shall remove those sections of that regulation.

**Sec. 14.** NRS 639.23915 is hereby repealed.

**Sec. 15.** This act becomes effective ~~1.~~

~~1. Upon~~ upon passage and approval ~~for the purpose of adopting any regulations and performing any other preparatory administrative tasks that are necessary to carry out the provisions of this act; and~~

~~2. On January 1, 2020, for all other purposes.]~~

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## TEXT OF REPEALED SECTION

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**639.23915 Practitioner to consider certain factors before prescribing certain controlled substances.** Before prescribing a controlled substance listed in schedule II, III or IV, a practitioner, other than a veterinarian, must consider the following factors, when applicable:

1. Whether there is reason to believe that the patient is not using the controlled substance as prescribed or is diverting the controlled substance for use by another person.

2. Whether the controlled substance has had the expected effect on the symptoms of the patient.

3. Whether there is reason to believe that the patient is using other drugs, including, without limitation, alcohol, controlled substances listed in schedule I or prescription drugs, that:

(a) May interact negatively with the controlled substance prescribed by the practitioner; or

(b) Have not been prescribed by a practitioner who is treating the patient.

4. The number of attempts by the patient to obtain an early refill of the prescription.

5. The number of times the patient has claimed that the controlled substance has been lost or stolen.

6. Information from the database of the program established pursuant to NRS 453.162 that is irregular or inconsistent or indicates that the patient is inappropriately using a controlled substance.

7. Whether previous blood or urine tests have indicated inappropriate use of controlled substances by the patient.

8. The necessity of verifying that controlled substances, other than those authorized under the treatment plan established pursuant to paragraph (c) of subsection 1 of NRS 639.23911, are not present in the body of the patient.

9. Whether the patient has demonstrated aberrant behavior or intoxication.

10. Whether the patient has increased his or her dose of the controlled substance without authorization from the practitioner.

11. Whether the patient has been reluctant to stop using the controlled substance or has requested or demanded a controlled substance that is likely to be abused or cause dependency or addiction.

12. Whether the patient has been reluctant to cooperate with any examination, analysis or test recommended by the practitioner.

13. Whether the patient has a history of substance abuse.

14. Any major change in the health of the patient, including, without limitation, pregnancy, or any diagnosis concerning the mental health of the patient that would affect the medical appropriateness of prescribing the controlled substance for the patient.

15. Any other evidence that the patient is chronically using opioids, misusing, abusing, illegally using or addicted to any drug or failing to comply with the instructions of the practitioner concerning the use of the controlled substance.

16. Any other factor that the practitioner determines is necessary to make an informed professional judgment concerning the medical appropriateness of the prescription.