

INFORMATION SHEET

“MEDICAL FACILITY” BUSINESSES

PREPARED BY THE NEVADA STATE BOARD OF OSTEOPATHIC MEDICINE

Recent investigations and disciplinary actions have presented questions about the understanding or the misunderstanding about the duties and obligations of a Doctor of Osteopathy (DO) or a Physician Assistant (PA) who practices at or is affiliated with a clinic that is not legally recognized as a “medical facility.”

Examples of “medical facilities”: medi-spa; weight loss clinic; hangover clinic (IV Therapy); erectile dysfunction clinic; medical marijuana prescribing; drug detoxification; and, Medically-Assisted Treatment or MATs.

Business vs Medical Facility -- NOTE: The following are Businesses, and NOT Medical Facilities:

- 1) owned by an entrepreneur with NO medical license; and,
- 2) employ licensed osteopathic physicians (DOs), Physician Assistants (PAs) and nurses to perform the multiple “medical related” services offered.

What Is a “Medical Director?”-- No statute or regulation defines or creates the title/position of “Medical Director.” The business owner gives the title “Medical Director” to a DO or PA when needing a license to try to legitimize and authorize the operation.

What Is the Legal Status of These Businesses? -- If a DO or PA offers and provides medical/health related services, **THE BUSINESS IS CONSIDERED A MEDICAL PRACTICE. Medical related services must be performed by and through a licensed medical professional, such as a DO or PA,** who has the training, skill, knowledge, ability, and legal authority to make medical determinations, diagnoses and prescribe and administer certain treatments the business offers.

Duties and Obligations of DOs and PAs Working in a “Medical Facility” Business -- DOs or PAs involved with such medical practice businesses are responsible to uphold the requisites of a medical practice, including:

- Only the DO or PA may make medical decisions. All patients must be initially seen and examined by the DO or PA. This is non-delegable.ⁱ
- The people served by the businesses are **PATIENTS**, not customers or clients.
- Any stock of prescription drugs must only be accessed by the DO or PA. Only the medical professional should hold the key to the medical drug storage room, as the DO or PA is responsible for ensuring the prescription drugs are properly stored and secured.ⁱⁱ
- The DO or PA is responsible for all prescription drugs and devices on premises; and, always involved in the ordering, reviewing, storing, and accounting for of all prescription drugs and devices on premises.ⁱⁱⁱ
- DOs or PAs dispensing prescription drugs to patients for at-home use must have a dispensing registration from the Pharmacy Board, and will be subject to its jurisdiction, statutes, and regulations.^{iv}
- Patient Medical Records must be created and maintained accordingly. Examinations and diagnoses of patients must be properly recorded. **The medical records must be available to the DO or PA at any time, and maintained per NRS chapter 629 and HIPAA.** The businesses providing such medical services mentioned above are **NOT** medical facilities as defined by NRS 449.0151; therefore, the business **SHALL NOT** be the custodian of the records per NRS 629.016. Only the DO or PA serving the patients shall be the custodian of records.^v
- No treatment, drug, or prescription may be administered unless and until the DO or PA has diagnosed a condition which the treatment or prescription drug would be appropriate. The diagnosis must be based upon medical judgment by the DO or PA, and the medical examination and findings in the patient’s chart.^{vi}

- Any treatments or prescriptions must meet the appropriate standard of care. Examples include the following:
 - 1) the use of stimulants for weight loss must be in accord with the standard of care for a bariatric practitioner;
 - 2) the use of Botox or dermatologic fillers must be in accord with the standard of care for a cosmetic practitioner or plastic surgeon; and,
 - 3) the prescribing of medical marijuana must be in accord with Nevada statutes and regulations.^{vii} In all cases, the DO or PA must always be responsible for meeting the proper standard of care. This care **SHALL NOT** be delegated to the owner and operator of the business. Business exigencies and profitability will never justify or excuse medical acts that are below the standard of care.^{viii}
- Any other medical professionals employed by such a facility, such as nurses, must act within their scope of licensure and competence. The DO or PA is responsible to assure that the other medical professional is competent, as that person is working under the supervision of the DO or PA.
- A nurse or other person may **NOT** act independently, including acting under protocols or policies.^{ix}
- The DO or PA must be knowledgeable of all medical procedures and treatment being performed by employees of the practice. Previous complaints to the Board have indicated that some employees of the business are performing service, treatments, or procedures that would not be authorized for the DO or PA. For example, a medical director DO or PA must be able to safely and legally administer Botox or cosmetic filler injections in somebody's home or at a "Botox party," before other employees, such as nurses, are able to administer the same treatments. Also, the Board has found that the owner or operator of these practices mistakenly believe that prescription drugs and devices can be removed with impunity and unauthorized by the DO or PA.^x
- A DO or PA **SHALL NOT** sign blank prescriptions and leave them for staff of the business to complete.^{xi}

What Are the Potential Consequences When Working for a "Medical Facility" Business? – The Board may take appropriate disciplinary action, including issuing **fines, probation, suspension, or revocation of the DO or PA license for those who do not follow standard of care requirements in such "medical facilities."** Also, if Nevada or Federal laws are violated. Actions are reportable to the National Practitioner Data Bank (NPDB) and could impact the DO's or PA's malpractice insurance and hospital privileges.

ⁱ NRS 633.051 (Definition of "healing art"); NRS 633.081 (Definition of "osteopathic medicine"); NRS 633.131(1)(f)(2); NRS 633.432 (scope of practice for PA); NAC 639.945(1)(n) and (o) (Disciplinary cause for DO or PA who dispenses or prescribes a prescription drug without a bona fide therapeutic relationship with a patient); NAC 639.945(3) (definition of "bona fide therapeutic relationship"). NRS 633.131(1)(c) makes it a cause for discipline to aid or abet the unlicensed practice of osteopathic medicine. *Note:* NRS 633.512 authorizes the Board's staff to enter any premises in which a DO or PA practices to determine whether any violation of Nevada law is occurring, including but not limited to determining whether any unlicensed practice is occurring.

ⁱⁱ NRS 633.131(1)(g) and (k) and NRS 633.511(1)(w) make it a cause for discipline to prescribe, dispense, or administer a prescription drug "otherwise than in the course of legitimate professional practice" (NRS 633.131(1)(g)) or in violation of applicable Nevada law; NRS 639.235(1) (Only a licensed practitioner may prescribe); NAC 639.945(1)(n) and (o) (Disciplinary cause for dispensing or prescribing by a DO or PA without having a bona fide therapeutic relationship with a patient);

ⁱⁱⁱ NRS 633.131(1)(f)(2); NRS 633.511(1)(x)

^{iv} NRS 639.23505 and NAC 639.742 – 639.745; NRS 454.301 (dispensing of dangerous drugs); *Note:* Per NRS 454.301(1)(c), dangerous drugs may not be dispensed or furnished "by a nurse or attendant" or "in violation of a regulation adopted by the [Pharmacy] Board."

^v NRS 633.131(1)(m) and (q) makes it a cause for discipline to fail to provide medical records to a patient, and NAC 633.350(1)(e) defines as unethical conduct the failure to generate or create medication records relating to the diagnosis, treatment or care of a patient.

^{vi} NRS 639.2353(2)(g) (prescription must contain ICD10 diagnostic code); NRS 639.23911(1)(a) (DO or PA must have bona fide relationship with patient), NRS 639.23911(1)(b) (DO or PA must perform an evaluation and risk assessment of a patient), and NRS 639.23911(1)(c) (DO or PA must establish a preliminary diagnosis); NAC 639.280(1)(a) (prescription by PA must be "for a legitimate medical purpose"); NAC 639.834 (DO or PA must review medical history and conduct physical examination before prescribing controlled substance); 21 CFR § 1300.02; 21 CFR § 1300.04(k); 21 CFR § 1306.04;

^{vii} NRS 633.521(2).

^{viii} NRS 453.256(5) (controlled substance may be dispensed "only for medical treatment ... in the ordinary course of his or her profession")

^{ix} NRS 632.0169 (definition of "practice of nursing");

^x NRS 633.511(1)(y) and NRS 454.217 (limiting persons authorized to administer Botox and dermal fillers); NRS 633.432 limits the scope of practice for a PA to the scope of practice of his or her supervising DO and NAC 633.289(2) makes the supervising DO responsible for the acts of his or her PA; NRS 633.511(1)(t) makes it a cause for discipline to fail to supervise adequately a medical assistant. *Note:* Per NAC 633.350(3) medical assistant must be employed by the DO (not the business employing the DO), must act under the direction and supervision of the DO (not the direction or supervision of the business employing the DO), assists the DO in the care for a patient (does not act independently), and can only perform tasks that do not otherwise require a license to provide.

^{xi} NRS 633.511(1)(k).