

NEVADA STATE BOARD OF OSTEOPATHIC MEDICINE NEWSLETTER

Nevada State Board of Osteopathic Medicine, 2275 Corporate Circle, Suite 210, Henderson, NV 89074

January, 2020 Volume 19

INSIDE THIS ISSUE

New Board Regulations Reduce Fees Information on Medical “Facility” Businesses GUEST ARTICLE: “Causes and Solutions for Physician Burnout”



New Regulation, R011-19, Lowers Some License Fees

In November 2019, the Legislative Commission approved the Board’s proposed regulation, LCB R011-19. The regulation implements the following changes:

- Reduces by \$100, several of the license fees charged by the Board
- Allows the Board to accept certain qualifying license application documents directly from the applicant rather than through the Federation Credential Verification Service (FCVS)
- Removes inapplicable and out-of-date language in current regulations

The Process

The Board held a public workshop on August 13, 2019, with one public comment supporting the regulation; and, held a public hearing on September 10, 2019, with no public comments, and the Board approved the regulations on September 10, 2019. The LCB approved of the regulation in November 2019.

Why Lower Fees?

The Board Audit conducted by the Legislature’s Sunset Review Subcommittee in 2018 noted that the Board of Osteopathic Medicine may have been charging higher license fees than similar boards in the region. Upon a comparative review of other board licensing fees, and reviewing the Board’s reserve policy, it was decided that fees could be reduced by \$100 without impact to Board operations.

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BOARD/STAFF NEWS...

Board: In November, Carla Perlotto, Ph.D, was reappointed by Governor Sisolak to the Board as one of the public members.

Staff: We welcome Kimberly Bennett in the newly created dual position of Complaint/License Specialist, to work on both complaint and licensing matters, since the number of licensing applications have increased the past few years. Ms. Bennett brings years of experience in licensing/credentialing, healthcare, research and administration.

Mission: The Nevada State Board of Osteopathic Medicine's mission is to protect and safeguard the public by licensing and disciplining well-educated and competent Doctors of Osteopathy and Physician Assistants.

CURRENT MEMBER LIST- INTERSTATE MEDICAL LICENSURE COMPACT (IMLC)

- NEVADA
- ALABAMA
- ARIZONA
- COLORADO
- DISTRICT OF COLUMBIA
- GEORGIA
- U.S. Territory of GUAM
- IDAHO
- ILLINOIS
- IOWA
- KANSAS
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- OKLAHOMA
- PENNSYLVANIA
- SOUTH DAKOTA
- TENNESSEE
- UTAH
- VERMONT
- WASHINGTON
- WEST VIRGINIA
- WISCONSIN
- WYOMING

2020 BOARD MEETINGS

- January 14
- February 11
- March 10
- April 14
- May 12
- June 9
- August 11
- September 8
- October 13
- November 10
- December 8

ALL MEETINGS ARE HELD AT THE BOARD OFFICE AT 5:30 p.m. UNLESS OTHERWISE STATED

Licensing Applications

July-December 2019

- DO - 75
- PA - 10
- Residents - 5
- Other Special - 0
- Compact (IMLC) 20
- Total licensees - 2013

Enforcement Stats- July- Dec 2019

Complaints Reviewed/Investigated	58
Settlement/Remediation Agreements	1
Complaints resulting in a Letter of Caution	6
Complaints Authorized for Closure	52
Fulfilled (Completed) Agreements	0

Complaint Types*- July-Dec 2019

Medical Malpractice - 9
Prescribing - 7
Standard of Care - 27
Unprofessional Conduct General - 21
Medical Records - 8
Death Certificate Signing - 3
Terminating a patient - 1
Non - Reporting - 2
Other - 5

*Some types of complaints overlap

NEW BOARD LICENSE/RENEWAL FEES AS OF JANUARY 1, 2020

- INITIAL LICENSE FEE: DO-\$500*; PA-\$300*
- MILITARY DISCOUNT: 50%- DO-\$250; PA-\$150
- RENEWAL FEE: DO-\$350; PA-\$150
- ACTIVE MILITARY RENEWAL FEE: \$0 (NO COST)

*Fingerprint/background fees are an additional \$50.

For more info on our web site go to: <http://nsbom.org/LicensingPublic/licensurecompact.jsp>;

To apply for an interstate medical license (DOs only), go to: <http://www.imlcc.org/>

Closing your practice?

The statute requires practitioners to notify the Board in writing 30 days before closing your practice. See NRS 633.291; NAC 633.260(1)(2)) for full details.

Notify patients:

Per NRS 633.511(1)(n), it is best practices to give similar adequate notice to patients when closing or changing your practice.

CME Requirements Refresher:

DOs: Preceptorship credits may be applied to the required 35 CME credits per year. Required annual credits:

- Two (2) credits in opioid prescribing and ten (10) AOA 1A or AMA credits.
- Suicide Prevention: DOs must obtain two (2) credits in suicide prevention within two (2) years of being licensed, and repeated every four (4) years.
- Even years: two (2) credits of one of the following: ethics, pain management, or addiction medicine.

PAs: Obtain 20 credits per year, which includes two (2) credits in opioid prescribing.

INFORMATION
“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 6331(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).

Alternate Article*: "Medical Directors are More Than Just a Title," by Rachel Rose, JD, MBA:

<https://www.physicianspractice.com/law-malpractice/medical-directors-are-more-just-title>

*Link to article was approved by Ms. Rose. The article was published on the Physician Practice web site.

OPINION ARTICLE

Causes and Solutions for Physician Burnout

By Rachel Rose, JD, MBA

April 25, 2019

Healthcare providers are reaching their breaking point, if they haven't already.

From my perspective, physician burnout can be described as reaching the point where work stressors cause an individual so much distress that he or she leaves the practice of medicine either by switching careers or by committing suicide.

Often times, the reasons why physicians are burned out may be unknown. Those feelings of burnout or the underlying cause of them may be related to past trauma or an issue that has nothing to do with the practice of medicine.

Alternatively, the why may be directly related to either the practice of medicine or the business of medicine. For example, previously, I wrote an [article](#) for the [Nevada State Board of Medical Examiners](#) about battlefield medicine and the impact to first responders and physicians. Responding to a mass casualty such as the Oklahoma City bombing, the 2017 Las Vegas shooting or a school shooting carries residual trauma.

Physicians are human beings. If they do not address the underlying issues of trauma, these men and women may also develop post-traumatic stress disorder (PTSD). Given the rise in the number of [mass shootings](#), [terror attacks](#), and [hate crimes](#), the medical community must address burnout.

In order to provide suggestions for mitigating physician burnout and physician suicide, it is necessary to understand what it is and the underlying causes. One issue is that physician burnout has varying definitions.

A recent [study](#) published in the American Medical Association's journal [JAMA](#) illustrate why it's burnout is such a difficult problem to address. Authors gathered 182 reports involving nearly 110,000 physicians from 45 countries. They concluded:

"In this systematic review, there was substantial variability in prevalence estimates of burnout among practicing physicians and marked variation in burnout definitions, assessment methods, and study quality. These findings preclude definitive conclusions about the prevalence of burnout and highlight the importance of developing a consensus definition of burnout and of standardizing measurement tools to assess the effects of chronic occupational stress on physicians."

The business of medicine appears to have more of an impact on physician burnout than the actual practice of medicine, according to a recent [study](#) published in the [Journal of Internal Medicine](#). Researchers identified five causes for burnout:

- Excessive workload, including EHRs and pre-authorizations;
- Work inefficiency and lack of work support;
- Work-life balance;
- Loss of autonomy and control; and
- Loss of meaning from work.

Fortunately, some of these stressors can be addressed. For example, physicians can:

- Hire additional clerical staff and make a concerted effort to retain good staff;
- Try different software programs and EHRs to find the one best suited for their practice; and
- Keep mental, physical, and emotional health in check by exercising, practicing yoga, eating well, sleeping, and seeing a therapist.

Although some of these suggestions may appear to be more time-consuming, they actually make physicians more efficient and productive. By delegating tasks and hiring staff, physicians can reduce their stress while spending more time focused on patient care.

The U.S. healthcare system is at a tipping point. It needs to take action to address burnout. There is no other alternative. If not us, then who? If not now, then when? After all, what will the healthcare system be if physicians and other medical professionals are not there to treat those who are sick or injured?

Rachel V. Rose, JD, MBA, advises clients on compliance and transactions in healthcare, cybersecurity, corporate and securities law, while representing plaintiffs in False Claims Act and Dodd-Frank whistleblower cases. She also teaches bioethics at Baylor College of Medicine in Houston. Rachel can be reached through her website, www.rvrose.com.

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NEW INFORMATION FOR VETERANS!

Legislation enacted in July 2019, AB 300, provides for the outreach, education and expansion of information to veterans for service-connected disabilities and diseases, along with providing a statewide information and referral information system to the public. Below are links to documents outlining available programs and definitions of the types of service-connected health matter available to veterans. The goal of the legislation is to ensure veterans not currently using available health care services will become aware and use such services to improve their quality of life.

The information below is also available on the title page of the Board's web site under "Veterans Services."

Understanding Presumptive Conditions:

<http://nsbom.org/LicensingPublic/docs/Presumptive%20Conditions%20-%20Veterans%20Services.pdf>

Types of Presumptive Conditions and Resources:

<http://nsbom.org/LicensingPublic/docs/Types%20of%20Presumptive%20Conditions.pdf>

Text of Bill-AB 300-As Enrolled: <https://www.leg.state.nv.us/App/NELIS/REL/80th2019/Bill/6552/Text>

IMPORTANT REMINDERS

Reporting Disciplinary/Malpractice Actions

Please Note: As per NRS 633.527, all licensees are **required** to report all actions in which they are named, including disciplinary, malpractice claims, fulfillment and removal, within 45 days of the action. The National Practitioner Data Bank (NPDB) reports to the Board all disciplinary, malpractice and positive settlement fulfillments and disciplinary action removals. Malpractice settlements involving minors (under 18 years old), must be approved by the courts. However, the NPDB may receive settlement notification by an insurance carrier prior to court approval, starting the reporting timeline in our statute. Please communicate with your insurance company to comply with the reporting timeline.

NOTE ON LICENSE RENEWAL: CME REGULATION REQUIREMENTS FOR CONTROLLED SUBSTANCES R116-17 (EFFECTIVE FEBRUARY 2018)

- **Osteopathic Physicians: Ten hours** of category A-1 courses
- **Osteopathic Physicians: Two hours** that relate to the misuse and abuse of controlled substances, the prescribing of opioids or addiction
- **Physician Assistants:** Included in the completion of **20 hours** of annual continuing medical education completion of at least **two hours** which must relate to the misuse and abuse of controlled substances, the prescribing of opioids or addiction

OCCUPATIONAL RESOURCES

Nevada Osteopathic Medical Association (NOMA)

2255 Springdale Court, Reno, NV 89523
(702) 434-7112

nvoma@earthlink.net www.nevadaosteopathic.org

Federation of State Medical Boards (FSMB)

www.fsmb.org

NEW! Opioid and Pain Management Resource Web Page

<http://www.fsmb.org/opioids/>

American Osteopathic Association

<https://www.osteopathic.org/Pages/default.aspx>

REFRESHER OF THE RESOURCES FOR THE REQUIREMENTS OF AB 474 (CONTROLLED SUBSTANCE PRESCRIBING ACT)

- **AB 239 Revises AB 474 (2019):** http://nsbom.org/LicensingPublic/docs/AB239_EN.pdf
- **AB 474 Webinar Recording for 12/18/17:**
[http://www.nsbom.org/LicensingPublic/docs/WEBINARAB474\(121817\).mp4](http://www.nsbom.org/LicensingPublic/docs/WEBINARAB474(121817).mp4)
- **Link to AB 474 law on BOM website at:**
- **Nevada State Medical Association:** www.nvdoctors.org
- **Nevada Division of Public and Behavioral Health web page, info on AB 474 and Requirement for Reporting an Overdose:**
http://dpbh.nv.gov/Resources/opioids/Prescription_Drug_Abuse_Prevention/

DO YOU HAVE NEWSLETTER TOPIC SUGGESTIONS?

Please email Sandy Reed at: sreed@bom.nv.gov

PLEASE NOTE that the contents of this newsletter constitute official notice from the Board to its licensees. All licensees are responsible to read and understand the contents of this newsletter.