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OFFICE OF THE ATTORNEY GENERAL

100 North Carson Street
Carson City, Nevada 89701

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OPINION NO. 2025-01

BOARD OF PHARMACY; CONTROLLED
SUBSTANCES; DRUGS/DRUG ADDICTS;
FOOD AND DRUG; HEALTH; HEALTH
CARE PROVIDERS; HOMEOPATHIC
MEDICINE; LICENSES; MEDICINE;
OSTEOPATHY; STATE BOARD OF
HOMEOPATHIC MEDICAL EXAMINERS:
Nevada law, specifically NRS 453, 454 and
639 do allow a licensed homeopathic
physician in Nevada to possess, administer,
prescribe, and dispense controlled
substances and dangerous drugs. However,
the administration and prescription of said
drugs and substances is strictly limited to
only the drugs and substances used in
accepted homeopathic medicine practice,
and only in the very limited amounts
permitted in accepted homeopathic
practice.

Helen Park, Pharm.D., President
Nevada State Board of Pharmacy
985 Damonte Ranch, Pkwy #206
Reno, Nevada 89521

Dear President Park,

Pursuant to NRS 228.150, you have requested an opinion from this office regarding Nevada's pharmacy and controlled substance statutes, including Nevada Revised Statutes ("NRS") 453, 454 and 639. Specifically, you have asked whether a licensed homeopathic physician, who is not otherwise licensed as an allopathic or osteopathic physician in Nevada, may possess, administer, prescribe, and dispense controlled substances and dangerous drugs under Nevada law. This letter addresses that question.

QUESTION

Whether a licensed homeopathic physician, who is not otherwise licensed as an allopathic or osteopathic physician in Nevada, may possess, administer, prescribe, and dispense controlled substances and dangerous drugs under Nevada law.

SHORT ANSWER

Current Nevada law allows singly licensed homeopathic providers, who are not also licensed as either an allopath or osteopath, to possess, administer, and prescribe both dangerous drugs and controlled substances. However, the administration and prescription of said drugs and substances by a singly licensed homeopathic provider are strictly limited to only the drugs and substances used in accepted homeopathic medicine practice, and only in the very limited amounts permitted in accepted homeopathic practice. For example, common homeopathic practice generally limits utilization of a controlled substance to heavy dilution of a single pill of the drug, versus common allopathic or osteopathic practice, which may allow for the prescription of dozens of pills of the same drug. Various legal mechanisms are in place to monitor and enforce these limits to drugs and dosage.

For dangerous drugs, the prescription of drugs that are (1) not recognized for use in homeopathic medical practice, or (2) are in amounts/dosages beyond what is commonly allowed, is policed and enforced as part of the Nevada Board of Homeopathic Medical Examiners' (NBHME) supervision of its licensees. Failure of any singly licensed provider to adhere to the appropriate limitations would likely be considered malpractice and subject the licensee to disciplinary action from NBHME, which could include revocation of the provider's license to practice.

For controlled substances, the singly licensed homeopathic provider must obtain a controlled substances registration from the Nevada Board of Pharmacy. The Board of Pharmacy has wide discretion and considers numerous factors to determine if any single provider is apt to safely prescribe and utilize controlled substances. For example, a singly licensed homeopathic provider (or any licensed provider for that matter) who has a history of malpractice and/or past disciplinary action may be properly denied a controlled substance registration. Even if a singly licensed homeopathic provider is granted a controlled substance registration, the Board of Pharmacy may continue to closely monitor that provider to ensure that it is utilizing and prescribing controlled substances consistent with accepted homeopathic

practice. Any utilization of non-approved substances and/or use of approved substances in amounts that exceed the generally accepted practice of homeopathic medicine would be grounds for the Board of Pharmacy to initiate disciplinary action against the provider.

ANALYSIS

Background

Under NRS 0.040, the definition of “physician” includes a “homeopathic physician” and the practice of homeopathy. NRS 454.000958 defines “practitioner” to include a “physician...who holds a valid license to practice his or her profession in this State[.]” “Homeopathic medicine” and “homeopathy”, as currently defined and described in NRS 630A.040, mean a system of medicine “employing substances of animal, vegetable, chemical or mineral origin[.]” This includes “Nosodes and sarcodes,” which are generally defined as inactivated disease products of human, animal, or vegetable origin, or cultures of microorganisms. For the purposes of this opinion, a homeopathic provider who is not at present time concurrently licensed as either an allopathic or osteopathic provider is determined and referred to as “singly licensed.”

Definitions

Dangerous Drugs. “Dangerous drugs,” as defined in NRS 454.201, generally include drugs, other than controlled substances, that can only be dispensed via prescription because they present a danger if used in an unsupervised manner. Under NRS 454.213, persons authorized to “possess and administer a dangerous drug,” include a “practitioner.” NRS 454.215 also allows a “practitioner” to dispense “dangerous drugs.” Since the statutory definition of “practitioner” includes a “physician,” and the statutory definition of a “physician” includes a licensed homeopathic physician, current Nevada law does allow a licensed homeopathic physician to possess, administer, and/or dispense (*i.e.*, prescribe) “dangerous drugs.” In accordance with previous Attorney General and Counsel opinions, however, a singly licensed homeopathic provider’s ability to possess, administer, and/or prescribe dangerous drugs is limited to only those drugs and in only those amounts generally allowed in homeopathic practice pursuant to The Homeopathic Pharmacopoeia of the United States (HPUS).

There is no separate registration or license for “dangerous drugs” in Nevada. Monitoring and enforcement for ensuring that a singly licensed homeopathic provider only prescribes substances and amounts in accordance

with generally accepted homeopathic medicine practice comes directly from NBHME.

Controlled Substances. The possession, administration, and/or prescription of “controlled substances” by a singly licensed homeopathic provider requires examination of NRS 453, Nevada’s “Uniform Controlled Substances Act.” Nevada law requires physicians to register with the Nevada State Board of Pharmacy to possess, administer, prescribe or dispense a controlled substance.¹ NRS 630A.370(3) states that one of the grounds for the Board of Pharmacy to initiate disciplinary proceedings against a homeopathic licensee is “[a]dministering, dispensing or prescribing any controlled substance, except as authorized by law.” *Id.* (emphasis added). The emphasized language at the end of NRS 630A.370(3) appears to assume that there is some legal means for a homeopathic licensee to prescribe controlled substances.

“Practitioners” who can possess, administer, and dispense controlled substances included homeopathic providers. *See* NRS 453.375, NRS 453.377. Per NRS 453.226, any practitioner who wishes to engage in the dispensing of any controlled substance within the State of Nevada must obtain registration from the Board of Pharmacy on a biennial basis. The Nevada Board of Pharmacy has wide discretion to determine on a case-by-case basis whether an applying practitioner is suitable to receive the required registration to administer, dispense, or prescribe a controlled substance. *See* NRS 453.231 (listing various factors for consideration, including “any” factors relevant to and consistent with public health and safety).

Under NRS 453.231, the Nevada Board of Pharmacy may exempt controlled substances listed as schedule I and/or II even if it otherwise grants a controlled license registration to a particular practitioner under NRS 453.231. NRS 453.236 also allows the Nevada Board of Pharmacy to suspend or restrict a registrant’s ability to possess, administer and prescribe certain controlled substances as part of disciplinary action. Finally, a practitioner looking to prescribe controlled substances must obtain and maintain a federal Drug Enforcement Agency license that must be renewed every 3 years, as well as create a Nevada Prescription Monitoring Account.

¹ See NRS 453.126, 453.226(1), NRS 453.375(1)(a), 453.377(1) and (3), 639.23505, 454.213(1)(a), and 454.215(1) and (3).

Previous Attorney General Opinions

Since the time “homeopathic physicians” were added to the statutory definition of “physician” in 1985, two Nevada Attorney General opinions have addressed the question of whether these practitioners can legally possess, dispense, and/or administer controlled substances and/or dangerous drugs. AGO 93-21 (1993) concluded that homeopathic physicians could possess, dispense and administer drugs, but only those that are found in the HPUS. This conclusion was largely based on the language of NRS 630A.040, which limited the authority of homeopathic physicians to write prescriptions to only substances in the HPUS and in only the dosages found in the HPUS. AGO 93-21 concluded, based on the definitions found in the HPUS, that “[n]o known allopathic drugs regularly stocked by Nevada pharmacists would be ‘sarcodes’”.

A 1999 Attorney General Opinion, AGO 99-06, similarly determined that a NBHME regulation that allowed singly licensed homeopathic physicians to prescribe “pharmaceutical preparations”² exceeded the grant of authority delegated to NBHME and was therefore invalid. The regulation in question sought to allow licensed homeopathic providers to prescribe the same drugs and in the same doses as allopathic or osteopathic licensed providers. The reasoning behind the regulation was that all licensed homeopathic providers had received allopathic or osteopathic training sufficient to meet the prescription requirements in at least one state or country. AGO 99-06 expressly endorsed its 1993 opinion and again concluded that the ability of singly licensed homeopathic providers to “possess, dispense and administer controlled substances and dangerous drugs” should be limited to only those substances, and in only those limited doses, expressly approved and allowed by the HPUS.

Legislative Counsel Opinion

In 2000, considering the same NBHME regulation, the State Legislative Counsel (the “Counsel”) issued an opinion finding that homeopathic physicians could prescribe controlled substances and dangerous drugs within the course of practicing certain alternative therapies.³ The Counsel recognized that Attorney General opinions are non-binding and disclaimed the ability of such

² This term was expressly limited to exclude “narcotic drugs or opiates that are listed as schedule II-controlled substances pursuant to chapter 453 of NRS, except as those substances may be described for use in the official [HPUS]”.

³ Legislative Counsel Opinion date 1/31/2000.

opinions to invalidate regulations otherwise properly adopted in compliance with the provisions of NRS 233B and filed with the Nevada Secretary of State.

The Counsel's opinion is limited, however, and ultimately aligns with the previous Attorney General opinions in its conclusions and effect. In allowing for the prescription of scheduled controlled substances as medically appropriate in practicing an approved alternative therapy, the Counsel specifically exempts the prescription of "narcotic drugs and opiates that are listed as schedule II-controlled substances pursuant to chapter 453 of NRS, except as those substances may be described for use in the official Homeopathic Pharmacopoeia of the United States[.]" The Counsel's opinion states that, even if a homeopathic provider had the authority and ability to prescribe drugs as a licensed allopathic or osteopathic provider (*i.e.* "a doctor of medicine"), it would not be in the same doses as those providers. Finally, the Counsel concludes that the allowable extent of a singly licensed homeopathic provider prescribing controlled substances and/or dangerous drugs is strictly limited to the substances expressly recognized in common homeopathic practice (*i.e.*, the HPUS) and only in the intentionally and significantly limited doses called for in those therapies, such as the "one-pill rule."

The Counsel also notes that, in its opinion, the NBHME regulation at issue did not purport to grant a singly licensed homeopathic provider *carte blanche* authority to prescribe controlled substances and dangerous drugs, but rather in only the very limited doses and manners necessary for alternative therapies recognized in the HPUS. The opinion thus fairly aligns with the Attorney General opinions of 1993 and 1999, which discussed explicit and significant limitations on the ability of singly licensed homeopathic providers to prescribe certain drugs.

District Court Ruling

A relatively recent Nevada District Court decision—in which the court held that a physician who held an active allopathic or osteopathic license at the time of application for a homeopathic license does not need to have an active allopathic or osteopathic license at the time they seek to renew the homeopathic license—is likewise consistent with the 1993 and 1999 Attorney General opinions.⁴ The Court found that, based on statutory construction and differently listed requirements for a homeopathic license "application" versus a homeopathic license "renewal", (NRS 630A.230 vs. NRS 630A.325,

⁴ See *Gerber, H.D.M. v. State of Nevada ex rel.*, 2JD, Case No. CV-17-02142 (2018).

respectively), an applicant for initial homeopathic licensure must be licensed as either an allopathic or osteopathic provider but need not still be a licensed allopathic or osteopathic provider at the time they seek to renew their homeopathic license.


This case does not interfere with the Pharmacy Board's authority, under NRS 630A.225, to initiate disciplinary proceedings and/or revoke the homeopathic license of a provider who has had any other medical license or certificate in another jurisdiction revoked for gross medical negligence.

CONCLUSION

Singly licensed homeopathic physicians in Nevada may prescribe "dangerous drugs" as defined in NRS 454.201, but only as long as said "dangerous drugs" are recognized and included in the Homeopathic Pharmacopoeia of the United States (HPUS) and generally accepted homeopathic medical practice. Singly licensed homeopathic providers are also limited in the amounts/dosages of "dangerous drugs" they can utilize or prescribe to an amount not exceeding accepted homeopathic medical practice. Any deviation from accepted practice could and should be grounds for the initiation of disciplinary action by the Board of Homeopathic Medical Examiners.

Similarly, singly licensed homeopathic providers may use and prescribe controlled substances, but only after obtaining required registrations from the Nevada Board of Pharmacy and DEA, and only as is expressly allowed in the HPUS and generally accepted homeopathic practice. Even singly licensed homeopathic providers who have obtained the required Board of Pharmacy registration may only use and prescribe certain substances, and only in the limited doses allowed for in the HPUS. Failure of a singly licensed homeopathic provider to strictly adhere to these limitations on controlled substances subjects said provider to disciplinary action by the Board of Pharmacy, up to and including revocation of the provider's controlled substance registration.

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By: 
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