

NOTICE OF INTENT TO ACT UPON A PROPOSED REGULATION R067-18

NOTICE OF HEARING FOR THE ADOPTION OF A PERMANENT REGULATION OF THE NEVADA STATE BOARD OF PODIATRY

NOTICE IS HEREBY GIVEN that the Nevada State Board of Podiatry will hold a Public Hearing at 6:15 p.m., on July 16, 2018, at:

**Nevada State Board of Podiatry
1325 Airmotive Way
Suite 175-I
Reno, Nevada 89502**

The purpose of the hearing is to receive comments from all interested persons regarding the adoption of a regulation pertaining to Chapter 635 of the Nevada Administrative Code, LCB File No. R067-18. The following information is provided pursuant to the requirements of NRS 233B.0603:

1. The need for and the purpose of the proposed regulation.

The need and purpose of the proposed regulation is amending existing law authorizing the State Board of Podiatry to take disciplinary action against a podiatrist for certain causes, including, without limitation, unethical or unprofessional conduct. (NRS 635.130) Existing regulations set forth certain conduct by a podiatrist that the Board will interpret to be unprofessional conduct. (NAC 635.390) This regulation provides that the Board will also interpret a violation of certain applicable provisions of law and regulations relating to drugs to be unprofessional conduct.

2. Either the terms or substance of the proposed regulation or a description of the subjects and issues involved.

Section 1. NAC 635.390 is hereby amended to read as follows:

635.390 The Board will interpret the following conduct by a podiatrist to be unprofessional conduct:

1. The falsification of any record involving health care, including records of his or her attendance on the patient and of any medical procedures.
2. The writing of prescriptions for controlled substances in amounts which constitute a departure from the prevailing standards of acceptable medical practice.
3. Incompetent or negligent performance of services which results in injury to a patient or which creates an unreasonable risk that a patient may be harmed.
4. Consistent use of medical procedures, services or treatments which constitute a departure from the prevailing standards of acceptable medical practice but which do not constitute malpractice or gross malpractice.
5. The rendering of professional services to a patient while the podiatrist or podiatry hygienist is under the influence of alcohol or any controlled substance or while his or her mental or physical condition is impaired.

6. The use of misrepresentation, fraud, deception or subterfuge to obtain controlled substances.

7. Writing a prescription for a controlled substance for any person without an examination which confirms the medical necessity for the controlled substance.

8. Receipt of remuneration of any kind, directly or indirectly, from any:

(a) Hospital for admitting a patient to the hospital; or

(b) Person furnishing medical services to a patient, including services of a laboratory, radiology and physiotherapy services, services of a pharmacy or services of a company which supplies surgical and medical merchandise.

9. Charging an unreasonable additional fee for tests by a laboratory, radiology services or other tests which are ordered by the podiatrist and not performed in his or her office.

10. Violating a provision of the *Code of Ethics* adopted by reference pursuant to [NAC 635.098](#).

11. Violating any applicable provision of chapter 453, 454, 585 or 639 of NAC or chapter 453, 454, 585 or 639 of NRS.

3. If the proposed regulation is a permanent regulation, a statement explaining how to obtain the approved or revised text of the proposed regulation prepared by the Legislative Counsel pursuant to NRS 233B.063.

A copy of the proposed regulation may be obtained at:

*Nevada State Board of Podiatry
1325 Airmotive Way, Ste. 175-I
Reno, Nevada 89502
Telephone: (775) 789-2605
Facsimile: (775) 786-4451
E-mail: nvpodiatry@bop.nv.gov*

4. A statement of the estimated economic effect of the regulation on the business which it is to regulate and on the public. These must be stated separately and in each case must include:

(a) Both adverse and beneficial effects.

There are no anticipated adverse economic effects on the practices of podiatrists or the public since podiatrists were already required to follow Nevada's drug laws.

(b) Both immediate and long term effects.

There are no anticipated immediate or long-term economic effects on the practices of podiatrists or the public.

5. A statement identifying the methods used by the Nevada State Board of Podiatry in

determining the impact on a small business prepared pursuant to subsection 3 of NRS 233B.0608:

On March 12, 2018, the Board held a workshop at its regular meeting regarding the draft language that ultimately became R067-18. No member of the public attending the meeting offered comment during the workshop and no written comments were received regarding the language that ultimately became R067-18. No participant in any of the discussions presented any evidence or argument that the proposed drafts would have a positive or negative impact on small businesses. The Board sent copies of the Notice of Hearing and the proposed draft text to all the licensees it had emails for.

6. The estimated cost to the agency for enforcement of the proposed regulation.

There will be no significant cost to the Nevada State Board of Podiatry for enforcement of the proposed regulation.

7. A description of any regulations of other state or local government agencies which the proposed regulation overlaps or duplicates and a statement explaining why the duplication or overlapping is necessary. If the regulation overlaps or duplicates a federal regulation, the notice must include the name of the regulating federal agency.

There are no similar regulations of other state or government agencies that the proposed regulations overlap or duplicate.

8. If the regulation is required pursuant to federal law, a citation and description of the federal law.

This proposed regulation is not required by federal law.

9. If the regulation includes provisions which are more stringent than a federal regulation that regulates the same activity, a summary of such provisions.

This proposed regulation does not include any provision that is more stringent than a federal regulation that regulates the same activity.

10. The time when, the place where and the manner in which interested persons may present their views regarding the proposed regulation.

Persons wishing to comment upon the proposed action of the Nevada State Board of Podiatry may appear or participate telephonically by calling in to number: 866-632-4022 access code: 5194675088 and make oral comment at the scheduled public hearing, or may address their comments, data, views or arguments, in written form, to the Nevada State Board of Podiatry, Attention: Carolyn Cramer, Executive Director, at 1325

Airmotive Way, Suite 175-I, Reno, Nevada 89502, Facsimile: (775) 786-4451, E-mail: nvpodiatry@bop.nv.gov. Written submissions must be received by Nevada State Board of Podiatry on or before July 11, 2018. If no person who is directly affected by the proposed action appears to request time to make an oral presentation, the Nevada State Board of Podiatry may proceed immediately to act upon any written submission.

Copies of the notice and the regulations to be adopted or amended will be available at the Nevada State Board of Podiatry, 1325 Airmotive Way, Suite 175-I, and Reno, Nevada, 89502. A copy of this notice and the regulation to be adopted or amended has been submitted for posting for inspection by members of the public during business hours at the Nevada State Library and Archives, 100 Stewart Street, Carson City, Nevada. Copies of this notice and the proposed regulation will be mailed to members of the public upon request.

This notice and the text of the proposed regulation has been submitted to the State of Nevada Register of Administrative Regulations, which is prepared and published monthly by the Legislative Counsel Bureau pursuant to NRS 233B.0653, and on the Internet at <http://www.leg.state.nv.us>. This information is also available at the Nevada State Board of Podiatry' website at <http://podiatry.nv.gov>.

Upon adoption of any regulation, the agency, if requested to do so by an interested person either before adoption or within 30 days thereafter, will issue a concise statement of the principal reasons for and against its adoption and incorporate therein its reason for overruling the consideration urged against its adoption.

This Notice of Hearing has been deposited at the following locations:

Nevada State Library and Archives - 100 North Stewart Street, Carson City, Nevada 89701

Nevada State Board of Podiatry – 1325 Airmotive Way, Suite 175-I, Reno, Nevada 89502

Carson City Library – 900 N. Roop Street, Carson City, Nevada 89701

Churchill County Library - 553 S. Maine Street, Fallon, Nevada 89406

Clark County Library – 1401 E. Flamingo Road, Las Vegas, Nevada 89119

Douglas County Public Library - 1625 Library Lane, Minden, Nevada 89423

Elko County Library - 720 Court Street, Elko, Nevada 89801

Esmeralda County Library - 10 Montezuma Way, Silverpeak, Nevada 89047

Eureka Branch Library - 210 S. Monroe, Eureka, Nevada 89316

Humboldt County Library – 85 E. 5th Street, Winnemucca, Nevada 89445

Lincoln County Library – 63 Main Street, Pioche, Nevada 89043

Lyon County Central Library – 20 Nevin Way, Yerington, Nevada 89447

Mineral County Library – 110 1st Street, Hawthorne, Nevada 89415

Pershing County Library – 1125 Central Avenue, Lovelock, Nevada 89419

Storey County Library - 95 South R Street, Virginia City, Nevada 89440

Tonopah Library – 167 S. Central Street, Tonopah, Nevada 89049

Washoe County Library – 301 S. Center Street, Reno, Nevada 89505

White Pine County Library – 950 Campton Street, Ely, Nevada 89301

A copy of this notice of intent to act upon a regulation has been e-mailed to all licensees of the Nevada State Board of Podiatry for whom the Board has addresses for.