

PRESCRIBING IN NEVADA

An Inside Look at Changes to Nevada Laws Surrounding
Prescribing Controlled Substances for the Treatment of Pain

AB 239 UPDATE

The bolded sections are new AB239 language.

These changes to Nevada law do not supersede the responsibility and authority of practitioners to exercise their professional judgment when treating pain patients; these changes do not compel a practitioner to discharge any patient without a plan for on-going treatment.

September 1, 2019

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Introduction

Assembly Bill 474 from the 2017 Legislative Session produced many changes to Nevada's laws and procedures for prescribing a controlled substance (CS) for pain. Assembly Bill 239 from the 2019 Legislative Session further modified and refined the laws. This guide is designed to help practitioners understand and comply with the changes made in 2019, which are in **bold font** below.

For purposes of this guide, the term "practitioner" means any person licensed to prescribe a CS for human consumption. An "initial prescription" is a prescription prescribed for a new patient of a practitioner, or a prescription written to begin a new course of treatment for a practitioner's existing patient. The term does not include a prescription written to continue a patient's on-going course of treatment, including as the patient transfers from one practitioner to another. The term "course of treatment" means all treatment of a patient for a particular disease or symptom of a disease, including, without limitation, a new treatment initiated by any practitioner for a disease or symptom for which the patient was previously receiving treatment.

In this guide, key provisions of AB474 and AB239 are divided into five sections:

- 1) Components of a Written Controlled Substance Prescription
- 2) Factors to Consider Before Writing An Initial Prescription for pain
- 3) Exemptions for Hospice, Palliative, Cancer and Sickle Cell Prescriptions
- 4) Prescribing after 30 days for pain
- 5) Prescribing after 90 days for pain

Components of a Written Controlled Substance Prescription

Effective January 1, 2018, every written CS prescription, in addition to the components currently listed in NAC 453.440, must include the following:

- The patient's Date of Birth
- The International Classification of Diseases Tenth Revision (ICD-10) diagnosis code for the disease being treated with the CS
- The number of days the prescription is intended to last the patient
- The practitioner's Drug Enforcement Administration (DEA) number

If multiple practitioners' names and DEA numbers are printed on the prescription form, the prescription cannot be filled unless the practitioner clearly indicates which is his or her name and DEA number.

Before Writing an *Initial* Prescription

Before writing an initial prescription for a CS to treat pain, each practitioner must:

- Have a bona fide relationship with the patient¹;
- Establish a preliminary diagnosis and a treatment plan;
- Perform a *Patient Risk Assessment* (see below);
- Obtain and review the patient's PMP report and determine if the patient has been issued another prescription for the same CS.²
 - If the patient has been issued another CS prescription for the same CS, the practitioner shall not prescribe the CS **unless they determine it is medically necessary**;
- Discuss non-CS treatment options with the patient and indicate in the patient's medical record why a CS was prescribed;
- **Unless the practitioner determines that the prescription is medically necessary**, a practitioner, shall not issue an initial CS prescription for the treatment of pain that prescribes:
 - More than 14-day supply; and
 - More than 90 morphine milligram equivalent (MME) daily for an opiate naïve patient (patient who has never received an opioid prescription or the patient's most recent course of opioid treatment was completed more than 19 days prior to the initial prescription the practitioner is intending to issue); AND
 - Obtain an *Informed Consent* (see below).

Patient Risk Assessment

To Perform a Patient Risk Assessment, a practitioner must:

- Obtain and review the patient's **relevant** medical history of the patient.
- Conduct a physical examination of the patient **directed to the source of the patient's pain and within the scope of practice of the practitioner**.
- **If the prescription that exceeds a 30 days' supply:**
 - Make a good faith effort to obtain and review **any** medical records of the patient from any other provider who has provided care to the patient **that are relevant to the prescription; and**
 - **Document** efforts to obtain such medical records and conclusions from reviewing such medical records in the patient's medical record.
- Assess the mental health and risk of abuse, dependency and addiction of the patient using a validated instrument.

Informed Consent

A practitioner shall document in the medical record of the patient a conversation in which a patient provided informed consent. Informed Consent is not required to be in writing, however if a written informed consent is provided, the document must be included in the patient's medical record.

¹ A bona fide relationship is required for all Prescriptions under Nevada law and was not changes by AB474 or AB239.

² A PMP check is required for all Prescriptions for all CS Schedule II, III, IV, and Schedule V Opioids,

Informed consent obtained must include, where applicable, information concerning:

- The potential risks and benefits of using the CS, including the risks of dependency, addiction and overdose;
- The proper use, storage and disposal of the CS;
- Possible alternative treatment options;
- The patient's treatment plan;
- How the practitioner will address requests for refills;
- The risk of CS exposure to a fetus of a childbearing age woman;
- If the CS is an opioid, the availability of an opioid antagonist without a prescription; AND
- If the patient is an unemancipated minor, the risks that the minor will abuse, misuse, or divert the CS, including ways to detect those issues.

Exemptions for Hospice, Palliative, Cancer and Sickle Cell Prescriptions

Each practitioner who prescribes a CS listed in schedule II, III, IV or an opioid that is a CS listed in schedule V for the treatment of pain of a patient who has been diagnosed with cancer, sickle cell disease, or if receiving hospice or palliative care must:

- Have a bona fide relationship with the patient;
- Obtain informed consent or any applicable guidelines for informed consent established by:
 - The Centers for Medicare and Medicaid Services for hospice or palliative care;
 - American Society of Clinical Oncology or similar organization designated by regulation for cancer; or
 - The National Heart, Lung and Blood Institute or a similar organization designated by regulation for sickle cell disease.
- Obtain the patient's PMP report as soon as practical and at least once every 90 days.

Each practitioner who prescribes a CS listed in schedule II, III, IV or V for the treatment of pain of a patient who has been diagnosed with cancer, sickle cell disease, or is receiving hospice or palliative care is NOT required to:

- Perform a *Patient Risk Assessment*;
- Enter into a *Prescription Medication Agreement* with the patient;
- Adhere to the initial prescription days' supply or daily MME requirement

Prescribing after 30 days

A practitioner who prescribes a CS to treat pain for more than 30 days must, not later than 30 days after issuing the initial prescription, enter into a *Prescription Medication Agreement* with the patient. The Agreement must be part of the patient's record and the practitioner must update it at least every 365 days while the patient is using the CS or whenever the practitioner changes the treatment plan. The Agreement must include:

- Goals of the treatment;
- The patient's consent to drug testing when deemed necessary by the practitioner;

- A requirement that the patient take the CS as prescribed;
- A prohibition on sharing the medication with any other person;
- A requirement that the patient inform the practitioner of;
 - Any other CSs prescribed or taken by the patient;
 - Whether the patient drinks alcohol, uses cannabinoid or illicit drugs;
 - Whether the patient has been treated for side effects or complications relating to the use of the CS; and
 - Each state in which the patient previously resided or had a prescription for CS filled;
- Reasons the practitioner may change or discontinue the treatment.

Prescribing *after* 90 days

A practitioner who prescribes a CS to treat pain for more than 90 consecutive days must:

- Determine an evidence-based diagnosis for the cause of the pain;
- Complete a *Risk of Abuse Assessment* validated through peer-reviewed research;
- Discuss the treatment plan with the patient;
- Obtain and review the patient's PMP Report at least every 90 days during the course of treatment;
- If the patient is receiving a dose that exceeds 90 MME daily;
 - Consider referring patient to a pain management specialist;
 - Develop and document in the patient's medical record a revised treatment plan including an assessment of increased risk for adverse outcomes.

This information is provided by the Nevada State Board of Pharmacy pursuant to NRS 639.23916(2) as amended by Assembly Bill 239 from the 80th (2019) Session of the Nevada Legislature. This information does not constitute legal advice and does not establish an attorney-client relationship. This information does not override the specific provisions of Nevada law as applied to a particular set of facts.