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March 19, 1998

Senator Ann O Connell
7225 Montecito Circle
Las Vegas, Nevada 89120-3118

Dear Senator O Connell:

You have asked this office to consider the opinion of the Attorney General's Office, dated January 13, 1998, concerning the authority of the Board of Medical Examiners (hereinafter "Medical Board") and the Board of Homeopathic Medical Examiners (hereinafter "Homeopathic Board") to regulate persons who are licensed by both boards and to determine whether this office agrees with that opinion.

The opinion of the Attorney General's Office was requested in response to regulations proposed by the Medical Board that prohibited the use of Disodium Ethylene Diamine Tetra Acetic Acid (EDTA) and chelation therapy except in certain circumstances. Persons who practice homeopathic medicine pursuant to chapter 630A of NRS are authorized to use EDTA and chelation therapy. Because paragraph (c) of subsection 2 of **NRS 630A.230** requires as a condition for licensure with the Homeopathic Board that a practitioner must be licensed to practice allopathic or osteopathic medicine in any state or country, the District of Columbia or a territory or possession of the United States, several persons who are licensed by the homeopathic Board are also licensed by the Medical Board to practice allopathic medicine. Thus, if the Medical Board adopted the regulations prohibiting the use of the specified medical practices and the Homeopathic Board allowed their continued use, the question was raised regarding which regulations govern a person who is licensed by both boards. To resolve the uncertainty for dually licensed persons arising from this situation, the **Attorney General's Office** addressed this question in **Opinion No. 98-01**.

The Attorney General's opinion initially discusses the broad definition of practice of medicine set forth in **NRS 630.020** and the broad power of the Medical Board provided in **subsection 2 of NRS 630.130** to adopt such regulations as are

necessary or desirable to enable it [the Medical Board] to carry out the provisions of [chapter **630** of **NRS**]. Op. Att’y Gen. No. 98-01 at p.2 (Jan. 13, 1998). The opinion also notes that **NRS 630.003** provides that “[t]he powers conferred upon the [Medical Board] by this chapter must be liberally construed to carry out this purpose [that only competent persons practice medicine within this state].” *Id.* at 2. The opinion contrasts the board definition of “practice of medicine” with the more restricted definition of “homeopathic medicine” and “homeopathy” set forth in **NRS 630A.040**. *Id.* In addition, the opinion states that **subsection 4** of **NRS 630A.090** provides that “[t]his chapter does not authorize a homeopathic physician to practice medicine, including allopathic medicine, except as provided in **NRS 630A.040**.” *Id.* The opinion states that the use of broad language in the definition of “practice of medicine” in **NRS 630.020** “evidences a legislative intent to grant practitioners within the [Medical Board’s] jurisdiction the broadest possible scope of practice, whereas the use of restricted language in **NRS 630A.040** evidences a legislative intent to grant the practitioners within the [Homeopathic Board’s] jurisdiction a limited and delineated scope of practice.” *Id.*

In addition, the opinion analyzes case law in which licensing boards challenged a statute or regulation of another licensing board, alleging that the statute or regulation infringed on the authority of one board or on the practices of licensees of the board. *Id.* at 3-5. The opinion states that this case law indicates that “[w]here the legislature had given a specific board authority to regulate a given practice, the court deferred to the legislature’s direction, even where the regulation would affect licensees outside the regulatory authority of the board.” *Id.* at 5. Thus, based on the statutory language and case law, the opinion concludes that:

Unless and until the legislature says otherwise, we must conclude that each board has jurisdiction and regulatory authority over its licensees and that practitioners licensed by more than one board must comply with the statutes and regulations governing both of their licenses. If the statutes or regulations of two licensing boards conflict, a practitioner with two licenses will need to decide which practice to adhere to, cease the prohibited practice, or relinquish one of his or her licenses. These may be difficult alternatives, but they are the result of the legislature’s design.

Id. at 7 (emphasis added). Thus, the opinion states that as part of its authority to regulate its licensees, the Medical Board may prohibit medical practices that the Homeopathic Board allows. *Id.* at 8. Next, we will provide an independent analysis of the issue.

NRS 630.047, which is not mentioned in the Attorney General's Opinion, contains certain limitations on the otherwise broad regulatory authority of the Medical Board. This statute states that certain persons are exempt from chapter **630** of **NRS**, which governs allopathic physicians. The exempt persons include [a]ny person permitted to practice any other healing art under this Title who does so within the scope of that authority. **Paragraph (d) of subsection 1 of NRS 630.047**. To determine the meaning of this provision, which was added to **NRS 630.047** in 1985 by Senate Bill No. 64, we must apply rules of statutory construction. It is a basic rule of statutory construction that the plain meaning of a statute must control if the plain meaning of the statute is in accordance with the intent of the legislature in enacting the statute. *Estate of Delmue v. Allstate Ins. Co.*, 113 Nev. 414, 418 (1997). It is the opinion of this office that the plain meaning of paragraph (d) of subsection 1 of **NRS 630.047** is that a person is exempt from the provisions and requirements of chapter **630** of **NRS** and, by extension, regulations adopted by the Medical board pursuant to chapter **630** of **NRS**, if the person: (1) is licensed to practice a healing art other than standard allopathic medicine pursuant to **Title 54** of **NRS**; (2) is actually practicing the other healing art; and (3) is practicing the other healing art within the scope of the authority granted by the chapters of **NRS** and **NAC** that pertain to the other healing art. We have also examined the legislative history pertaining to Senate Bill No. 64 of the 1985 Legislative Session and, although the legislative history does not indicate the reason for the inclusion of the language contained in **paragraph (d) of subsection 1 of NRS 630.047**, the various advocacy letters submitted during the hearings on Senate Bill No. 64 indicate that many persons were, at that time, lobbying the Medical Board to refrain from restricting the practice of alternative medicine.

A licensing board is a creature of statute and therefore only has the authority that it is granted by the Legislature. Therefore, a person who is licensed as an allopathic physician and a homeopathic physician would be subject to regulation by both the Medical Board and the Homeopathic Board only to the extent of each board's statutory authority. Despite the language in chapter **630** of **NRS** which grants the Medical Board broad authority to regulate the practice of medicine, **paragraph (d) of subsection 1 of NRS 630.047** indicates a clear legislative intent to remove from the regulatory authority of the Medical Board a person who is licensed to practice a healing art, such as homeopathy, and who is actually practicing that healing art within the scope of authority granted by the statutes and regulations that pertain to that healing art. Furthermore, the legislature specifically charged the Homeopathic Board with the regulation of the practice of homeopathy, as that term is defined in **NRS 630A.040**. **Subsection 1 of NRS 630A.155** states that the Homeopathic Board shall [r]egulate the practice of homeopathic medicine in this state and any activities that are within the scope of such practice, to protect the public health and safety and the general welfare of the people of this state. Thus, to determine which board may regulate a dually

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licensed practitioner of allopathic and homeopathic medicine, the capacity in which the person is practicing must be analyzed. If the person is practicing within the scope of authority granted pursuant to chapter **630A** of **NRS**, which governs homeopathic physicians, it is the opinion of this office that the Legislature has charged the Homeopathic Board with regulating that person. Therefore, even though the Medical Board had adopted a regulation prohibiting that practice, the person may perform the practice because the Medical Board has no authority to regulate him while he is practicing within the scope of chapter **630A** of **NRS** (homeopathic physicians). However, if such a person is not practicing within the scope of authority of chapter **630A** of **NRS**, it is the opinion of this office that the Medical Board has authority to regulate that person and may prohibit him from performing certain medical practices.

In conclusion, it is the opinion of this office that the Medical Board may not regulate the practices of a person who is licensed to practice both allopathic medicine and homeopathic medicine while that person is actually practicing homeopathy within the scope of chapter **630A** of **NRS**.

If you have any further questions regarding this matter, please do not hesitate to contact this office.

Very truly yours,

Brenda J. Erdoes
Legislative Counsel

By _____
Eileen O Grady
Principal Deputy Legislative Counsel