

## OPINION NO. 93-21

PHARMACY, BOARD OF; HOMEOPATHIC MEDICAL EXAMINERS, BOARD OF;  
 DRUGS; CONTROLLED SUBSTANCES:

Amendment of NRS 0.040 in 1985 allowed homeopathic physicians to be considered to be "physicians," but exclusively homeopathic practitioners may only possess, prescribe, dispense or administer those dangerous drugs and controlled substances in such manner and quantity as allowed by NRS 630A.040.

Carson City, September 20, 1993

Mr. Keith W. Macdonald, Executive Secretary  
 Nevada State Board of Pharmacy  
 1201 Terminal Way, Suite 212  
 Reno, Nevada 89502

Dear Mr. Macdonald:

You have asked whether the amendment to NRS 0.040 made by the 1985 Legislature changes the letter opinion issued on January 7, 1985, such that an exclusively homeopathic physician may not prescribe, possess, dispense, and administer controlled substances and dangerous drugs. The brief answer to your question is that an exclusively homeopathic physician may prescribe a limited group of dangerous drugs (those that are "sarcodes") to patients and may possess and administer a limited group of dangerous drugs and controlled substances, all in compliance with the statutory criteria provided in NRS 630A.040.

### QUESTION

Did the amendment to NRS 0.040 enacted by the 1985 Legislature affect the letter opinion issued January 7, 1985, such that homeopathic physicians who are not also licensed as allopathic or osteopathic physicians may obtain a controlled substance registration or may prescribe, possess, or administer controlled substances and dangerous drugs?

### ANALYSIS

Prior to the 1985 legislative session, NRS 0.040 provided as follows:

1. Except as otherwise provided in subsection 2, as used in Nevada Revised Statutes, "physician" means a person who engages in the practice of medicine, including osteopathy.
2. The terms "physician," "osteopathic physician," "homeopathic physician" and "chiropractic physician" are used in chapters 630, 630A, 633, and 634 of NRS in the limited senses prescribed by those chapters respectively.

The 1985 Legislature left NRS 0.040(2) unchanged, but amended NRS 0.040(1) so that it now reads:

Except as otherwise provided in subsection 2, "physician" means a person who engages in the practice of medicine, including osteopathy and homeopathy. [Emphasis added.]

This office rendered a letter opinion on January 7, 1985, regarding whether a homeopathic practitioner was a "physician" under NRS 0.040(1). The letter opinion was rendered prior to the amendment to NRS 0.040(1) and, in fact, precipitated the amendment. In the letter opinion, this office drew two



conclusions: (1) that a homeopathic physician was not a "physician" for the purposes of NRS chapters 453, 454, and 639; and (2) that a homeopathic physician who was also licensed in Nevada as an allopathic or osteopathic physician could write prescriptions for controlled substances and dangerous drugs, provided that the homeopathic physician did so only for legitimate allopathic or osteopathic treatment and not for homeopathic purposes.

The amendment of NRS 0.040(1) had the far-reaching effect of bringing homeopathic practitioners within the coverage of all the sections throughout the NRS in which reference is made to "physicians." The amendment of NRS 0.040(1) also changed the analysis of the January 7, 1985, letter opinion in the limited way that the question presented at that time, namely whether a homeopathic physician was a "physician" under NRS 0.040, must now be answered affirmatively. The amended and present version of NRS 0.040(1) clearly indicates that homeopathic physicians are "physicians" as that term may be used throughout the NRS. The inquiry does not end here, though.

Subsection (2) of NRS 0.040 refers inquiries regarding each of the specific practitioner groups in subsection (1) to each's specific practice act. As such, the answer to the specific question addressed in this opinion regarding the prescribing, possessing, and administering powers of exclusively homeopathic practitioners must be made by reference to various portions of the pharmacy laws and NRS chapter 630A, the practice act for homeopathic practitioners.

NRS 453.226(1) provides the general definition of those persons who must be registered with the board of pharmacy to distribute or dispense controlled substances:

Every practitioner or other person who manufactures, distributes or dispenses any controlled substance within this state or who proposes to engage in the manufacture, distribution or dispensing of any controlled substance within this state shall obtain biennially a registration issued by the board in accordance with its regulations. [Emphasis added.]

A "practitioner" may administer controlled substances pursuant to NRS 453.375(1). A "practitioner," as defined in NRS 453.126, includes a "physician." Any person who manufactures, distributes or dispenses a controlled substance without prior registration may be punished by imprisonment of one to six years, may be fined not more than \$2,000. NRS 453.232. Similarly, NRS 454.213(1) allows a "practitioner" to possess and administer dangerous drugs, and NRS 454.215(3) allows a "practitioner" to dispense dangerous drugs. NRS 454.00958(1) defines a "practitioner" to include a "physician." Any person who furnishes dangerous drugs without the valid prescription of a practitioner may be imprisoned for one to six years, may be fined not more than \$5,000, or both. NRS 454.221(1).

NRS 630A.040 specifically defines the pharmacopoeia of medicines available for use by homeopathic physicians as follows:

"Homeopathic medicine" or "homeopathy" means a system of medicine employing substances of animal, vegetable, chemical or mineral origin, including nosodes and sarcodes, which are:

1. Given in micro-dosage, except that sarcodes may be given in macro-dosage;
2. Prepared according to homeopathic pharmacology by which the formulation of homeopathic preparations is accomplished by the methods of Hahnemannian dilution and succussion, magnetically energized geometric patterns, applicable in potencies above 30X as defined in the official Homeopathic Pharmacopoeia of the United States, or Korsakoffian; and
3. Prescribed by homeopathic physicians according to the medicines and dosages in the homeopathic Pharmacopoeia of the United States, in accordance with the principle that a substance which produces symptoms in a healthy person can eliminate those symptoms in an ill person, resulting in the elimination and prevention of illness utilizing classical methodology and noninvasive electrodiagnosis.

NRS 630A.090(4) clearly distinguishes homeopathic medicine from allopathic medicine and prohibits homeopathic physicians from practicing allopathic medicine: "This chapter does not authorize a homeopathic physician to practice medicine, including allopathic medicine, except as provided in NRS 630A.040." Additionally, pursuant to NRS 630A.230(2)(c), all homeopathic physicians must be licensed as allopathic or osteopathic physicians "in any state or country, the District of Columbia or a territory or possession of the United States." Thus homeopathic practitioners can be licensed exclusively as homeopathic physicians under NRS chapter 630A or can have dual licenses as homeopathic physicians and allopathic or osteopathic physicians.

In contrast to the narrow statutory scope of the practice of homeopathy, the definition of "practice of medicine" in NRS 630.020 is as follows:

1. To diagnose, treat, correct, prevent or prescribe for any human disease, ailment, injury, infirmity, deformity or other condition, physical or mental, by any means or instrumentality.
2. To apply principles or techniques of medical science in the diagnosis or the prevention of any such conditions.
3. To offer, undertake, attempt to do or hold oneself out as able to do any of the acts described in subsections 1 and 2.

4. To use in connection with a person's name the words or letters "M.D.," or any other title, word, letter or other designation intended to imply or designate him as a practitioner of medicine in any of its branches, except in the manner authorized by NRS 630A.220. [Emphasis added.]

The definition of "osteopathic medicine" is found in NRS 633.081 and provides:

"Osteopathic medicine" or "osteopathy" means the school of medicine which:

1. Utilizes full methods of diagnosis and treatment in physical and mental health and disease, including the prescribing and administering of drugs and biologicals of all kinds, operative surgery, obstetrics, radiological and other electromagnetic emission; and
2. Places emphasis on the interrelationship of the musculoskeletal system to all other body systems. [Emphasis added.]

The legislative intent from the above definitions is clear: homeopathy is a limited practice whereas allopathy and osteopathy are general. Allopaths may use "any means or instrumentality" in

their practices. Osteopaths may use "full methods of diagnosis and treatment" in their practices. Homeopaths, on the other hand, are limited to using only those medications that satisfy NRS 630A.040 "in accordance with the principle that a substance which produces symptoms in a healthy person can eliminate those symptoms in an ill person, resulting in the elimination and prevention of illness utilizing classical methodology and noninvasive electrodiagnosis." Furthermore, an allopathic physician may not call himself a homeopathic physician. NRS 630.020(4). It is clear that the legislature intended homeopathy to be a distinct style of medicine with a specifically defined pharmacopoeia suited to the homeopathic practice of medicine.

The question of which drugs a homeopathic practitioner can prescribe, possess, or administer is answered by the three-part test in NRS 630A.040, namely that the drug must be (1) given in micro- dosage (except that sarcodes may be given in macro-dosage); (2) prepared according to homeopathic pharmacology; and (3) prescribed by homeopathic physicians according to the medicines and dosages in the Homeopathic Pharmacopoeia of the United States. Generally, the dosages and forms of drugs maintained by Nevada pharmacies would not be in "micro-dosages," and would instead be in forms that would be deemed "macro-dosages" under NRS 630A.040. Thus NRS 630A.040 makes it clear that a homeopathic physician practicing homeopathically could not prescribe or administer the regular "macro-dosage" of any controlled substance or dangerous drug unless that drug were a "sarcocde." No known allopathic drugs regularly stocked by Nevada pharmacists would be "sarcodes."

A second question arises, though, as to whether a homeopathic practitioner may obtain and possess controlled substances and dangerous drugs for preparation of a homeopathic remedy therefrom. First, it seems unlikely that most of the regular stock of a Nevada pharmacy would qualify as the raw materials for the preparation of homeopathic remedies. Homeopathic remedies generally use organic materials and would not include the highly refined modern pharmaceuticals stocked by Nevada pharmacies. Nonetheless, it may be that some pharmaceuticals, especially some controlled substances may be stocked or available through Nevada pharmacies. For example, the monographs for homeopathic remedies include the following remedies that would be made from controlled substances: anhalonium lewinii (peyote), cannabis indica/cannabis sativa (marijuana), cocainum (cocaine), cocainum muriaticum (cocaine hydrochloride), codeinum (codeine), datura arborea/datura metel (datura), morphinum (morphine), morphinum muriaticum (morphine hydrochloride), and opium (opium). Additionally, it may be that some homeopathic remedies are fashioned from currently available dangerous drugs.

It is clear, therefore, that a homeopathic physician practicing homeopathically could legally obtain, possess, and administer some dangerous drugs and controlled substances for the manufacture of homeopathic remedies. Additionally, a homeopathic physician may also prescribe those dangerous drugs and controlled substances allowed by NRS 630A.040, but as a practical matter it is unlikely that any Nevada pharmacies stock dangerous drugs or controlled substances in homeopathic dosages or know how to prepare homeopathic remedies according to homeopathic methodology. To possess controlled substances, the homeopathic practitioner would be required to obtain a registration with the Drug Enforcement Administration (DEA) and a registration with the Nevada Board of Pharmacy pursuant to NRS 453.226. Additionally, any order for a controlled substance in Schedules I and II would need to be via a DEA Form 222; any order for other controlled substances would need to be via a valid order form, and all record-keeping, storage, and security statutes and regulations would also be applicable.

Of course, possession and administration of the controlled substances and dangerous drugs obtained by a homeopathic practitioner must also comply with the terms of NRS 630A.040. Administration of a controlled substance or dangerous drug in contravention to the dictates of NRS 630A.040 would subject a homeopathic practitioner to discipline by the Board of Homeopathic Examiners pursuant to NRS 630A.370(3) and (5), and to discipline by the Board of Pharmacy pursuant to NRS 453.241.

We suggest that representatives from the Boards of Pharmacy and Homeopathy meet to develop a comprehensive pharmacopoeia of drugs that Nevada pharmacists could provide to homeopathic practitioners or their patients that could be circulated among the members of the two professions. The pharmacopoeia should include at least the following categories: (1) those dangerous drugs that are

"sarcodes" and could be prescribed by the homeopathic practitioner to be filled at a Nevada pharmacy; (2) those controlled substances that are in Schedules I and II that could be ordered by homeopathic practitioners from Nevada pharmacies for the manufacture of homeopathic remedies; (3) those controlled substances in Schedules III, IV, and V that could be ordered by homeopathic practitioners from Nevada pharmacies for the manufacture of homeopathic remedies; and (4) those dangerous drugs that could be ordered by homeopathic practitioners from Nevada pharmacies for the manufacture of homeopathic remedies.

The second conclusion contained in the letter opinion of January 7, 1985, remains essentially unchanged; namely that a homeopathic physician who is also licensed in Nevada as an allopathic or osteopathic physician may write prescriptions for controlled substances for allopathic or osteopathic, not homeopathic, purposes. NRS 453.381(1), the statute that is the basis of this part of the letter opinion, has not been changed in the interim since 1985. Similarly, a dangerous drug cannot legally be prescribed by a homeopathic physician except for allopathic or osteopathic, not homeopathic, purposes. See NRS 454.211, NRS 454.221.

Of course, the dually-licensed practitioner could also prescribe, obtain, possess, and administer those dangerous drugs and controlled substances for homeopathic purposes according to the homeopathic method as has already been discussed. In other words, when a dually-licensed practitioner is practicing allopathically or osteopathically, he could prescribe any dangerous drug or controlled substance, but when he is practicing homeopathically, he can only avail himself of the more narrow homeopathic pharmacopoeia of dangerous drugs and controlled substances.

## CONCLUSION

The 1985 amendment to NRS 0.040 authorizes exclusively homeopathic physicians to possess, dispense, or administer those controlled substances and dangerous drugs that are recognized by the Homeopathic Pharmacopoeia of the United States and otherwise comply with NRS 630A.040. To possess, dispense, or administer any controlled substances, a homeopathic physician must obtain a federal DEA registration and a Nevada controlled substances registration. Homeopathic physicians who are also licensed in Nevada as allopathic or osteopathic physicians, in addition to the limited abilities to possess, dispense, administer, and prescribe certain dangerous drugs and controlled substances according to homeopathic practice, may also possess, dispense, prescribe, or administer controlled substances and dangerous drugs as appropriate and necessary to their allopathic or osteopathic practices.

Sincerely,  
FRANKIE SUE DEL PAPA  
Attorney General

By: LOUIS LING  
Deputy Attorney General

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