

NEVADA STATE BOARD OF OSTEOPATHIC MEDICINE NEWSLETTER

Nevada State Board of Osteopathic Medicine, 2275 Corporate Circle, Suite 210, Henderson, NV 89074

July 2020 Volume 20

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Updating Licensee Contact Information



The status of COVID -19 seems to change weekly throughout the country, likely impacting the practices of many providers. Below are important links to current information to help safely manage practice and home environments.

Centers for Disease Control

<https://www.cdc.gov/coronavirus/2019-ncov/hcp/framework-non-COVID-care.html>

American Osteopathic Association

<https://osteopathic.org/practicing-medicine/providing-care/covid-19-resources/>

Nevada Department of Health and Human Services

<https://nvhealthresponse.nv.gov/>

Licensee Contact Information

Licensees: Please provide the appropriate contact information (email, US mail or telephone) to the Board when updating mailing, home and practice addresses. This will ensure the Board can reach you when needed.

Note: The ONLY acceptable **mailing address** provided to the Board will be either a home (residence) address or a regularly checked PO Box. We have found that practice or license verification company addresses do not guarantee mail sent by the Board will be received.

BOARD/STAFF NEWS

Board: Dr. Mausling, Dr. Milne and Dr. Hedger have all applied for reappointment to the Board for another four-year term.

Staff: Congratulations to Nikki Montano, administrative/licensing assistant, who delivered a healthy baby girl on July 15, 2020! Both mom and baby are fine. She will be on maternity leave until early October. We also welcome back Clayton Bailey as the Complaint Specialist/Investigator, who returned to the Board in February. Mr. Bailey brings many years of investigation and research, retiring as a sergeant after 23 years of service with the San Bernardino County Sheriff's Department.

Board staff submitted to the FSMB a description and graphic outlining the efficiency in the Board's licensing process. To view, click on the following link: <http://nsbom.org/LicensingPublic/efficiencies.jsp>

NSBOM BOARD MEMBERS

Ronald Hedger, D.O.

President;

Paul Mausling, D.O.

Vice President

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Secretary/Treasurer;

Ricardo Almaguer, D.O.

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Carla Perlotto, Ph.D.

■STAFF

Sandra Reed

Executive Director

Clayton Bailey

Complaint Specialist/Investigator

Tammy Sine

Licensing Specialist/Bookkeeper

Nikki Montano

Administrative/Licensing Assistant

Mission: The Nevada State Board of Osteopathic Medicine's mission is to protect and safeguard the public by licensing and disciplining well-educated and competent Doctors of Osteopathy and Physician Assistants.

CURRENT MEMBER LIST- INTERSTATE MEDICAL LICENSURE COMPACT (IMLC)

- **NEVADA**
- ALABAMA
- ARIZONA
- COLORADO
- DISTRICT OF COLUMBIA
- GEORGIA
- U.S. Territory of GUAM
- IDAHO
- ILLINOIS
- IOWA
- KANSAS
- KENTUCKY
- MAINE
- MARYLAND
- MICHIGAN
- MINNESOTA
- MISSISSIPPI
- MONTANA
- NEBRASKA
- NEW HAMPSHIRE
- NORTH DAKOTA
- OKLAHOMA
- PENNSYLVANIA
- SOUTH DAKOTA
- TENNESSEE
- UTAH
- VERMONT
- WASHINGTON
- WEST VIRGINIA
- WISCONSIN
- WYOMING

2020 BOARD MEETINGS

- August 11
- September 8
- October 13
- November 10
- December 8

Due to the COVID-19 emergency, all meetings will be held telephonically at **5:30 p.m.** Otherwise, meetings are typically held at the board office.

Licensing Applications

January to June 2020

- DO - 101
- PA - 22
- Residents – 142
- Other Special - 0
- Compact (IMLC) 27
- Members & 10 SPL
- Total licensees - 2181*

Enforcement Stats: Jan-June 2020

- Complaints Reviewed/Investigated
57
- Settlement/Remediation Agreements
6
- Complaints resulting in a Letter of Caution
2
- Complaints Authorized for Closure
47
- Fulfilled (Completed) Agreements
3

Complaint Types*: Jan-June 2020

- Medical Malpractice – 9
- Prescribing – 8
- Standard of Care – 20
- Unprofessional Conduct General – 18
 - Medical Records – 3
 - Death Certificate Signing – 2
 - Terminating a patient - 2
- Non – Reporting – 0
- Other – 5

*Some types of complaints overlap

BOARD LICENSE/RENEWAL FEES AS OF JANUARY 1, 2020

- INITIAL LICENSE FEE: DO-\$500*; PA-\$300*
- MILITARY DISCOUNT: 50%- DO-\$250; PA-\$150 (INCLUDES SPOUSES)
- RENEWAL FEE: DO-\$350; PA-\$150
- ACTIVE MILITARY RENEWAL FEE: \$0 (NO COST)

*Fingerprint/background fees are an additional \$50.

For more info on our web site go to: <http://nsbom.org/LicensingPublic/licensurecompact.jsp>;

To apply for an interstate medical license (DOs only), go to: <http://www.imlcc.org/>

Closing your practice?

The statute requires practitioners to notify the Board in writing **30 days** before closing your practice. See **NRS 633.291**; **NAC 633.260(1)(2)** for full details.

Notify patients:

Per **NRS 633.511(1)(n)**, it is best practices to give similar adequate notice to patients when closing or changing your practice.

CME Requirements Refresher

Required Annual Credits

DOs:

- Ten (10) AOA 1A or AMA credits which includes two (2) credits in opioid prescribing
- Suicide Prevention: DOs must obtain two (2) credits in suicide prevention within two (2) years of being licensed, and repeat every four (4) years.
- Even years: two (2) credits of one of the following: ethics, pain management, or addiction medicine.
- **Preceptorship credits may be applied to the required 35 annual CME credits.**

PAs: Obtain 20 credits per year, which includes two (2) credits in opioid prescribing.

NOTE: The COVID-19 emergency does NOT exempt the annual CME requirements. All credits may be earned via online courses. Several sources are available on the Board website.

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GUEST ARTICLE

Dispelling the Myths About HIPAA, Telehealth, and the Coronavirus

By Rachel V. Rose

March 2020

On March 11, 2020, the World Health Organization (WHO) characterized the novel coronavirus (COVID-19) as a pandemic. Subsequently, on March 13, 2020, President Donald Trump declared a national emergency over COVID-19. The Department of Health and Human Services (HHS) Secretary had already declared a public health emergency (PHE) on January 31, 2020 under Section 319 of the Public Health Service Act.

The President's national emergency declaration allowed the Secretary to exercise additional authorities under Section 1135 of the Social Security Act to, among other things, "temporarily modify or waive certain Medicare, Medicaid, Children's Health Insurance Program (CHIP), and Health Insurance Portability and Accountability Act (HIPAA) requirements." These requirements may be waived or modified "to ensure that sufficient health care items and services are available to meet the needs of individuals enrolled in Social Security Act programs in the emergency area and time periods and that *providers who provide such services in good faith can be reimbursed and exempted from sanctions (absent any determination of fraud or abuse).*"

HHS has since issued waivers related to HIPAA and to Medicare reimbursement for telehealth services during the coronavirus pandemic, while continuing to emphasize the need for ongoing compliance with HIPAA's Privacy and Security Rules.

This article provides an overview of three areas related to HIPAA and the PHE: (1) privacy; (2) teleworking; and (3) telehealth.

Privacy Rule

The Privacy Rule includes an exception for health care providers to report certain diseases or conditions of an individual patient to various state and federal government agencies, such as state health departments or the Centers for Disease Control and Prevention (CDC), for public health activities. In a February 2020 Bulletin, HHS notes, *For example, a covered entity may disclose to the CDC protected health information on an ongoing basis as needed to report all prior and prospective cases of patients exposed to or suspected or confirmed to have Novel Coronavirus (2019-nCoV).*

The Bulletin also emphasizes limits on disclosing COVID-19 patient-related information. *In general, except in the limited circumstances described elsewhere in this Bulletin, affirmative reporting to the media or the public at large about an identifiable patient, or the disclosure to the public or media of specific information about treatment of an identifiable patient, such as specific tests, test results or details of a patient's illness, may not be done without the patient's written authorization.*

In addition, requirements for sharing information, including the minimum necessary standard, remain in place.

For example, a covered entity may rely on representations from the CDC that the protected health information requested by the CDC about all patients exposed to or suspected or confirmed to have Novel Coronavirus (2019-nCoV) is the minimum necessary for the public health purpose. In addition, internally, covered entities should continue to apply their role-based access policies to limit access to protected health information to only those workforce members who need it to carry out their duties.

With nearly identical language to the Bulletin that HHS released during Hurricane Harvey in 2017, a subsequent March 2020 HHS Bulletin notes that the Secretary "may waive certain provisions of the Privacy Rule under the Project Bioshield Act of 2004 (PC 108-276) and section 1135(b)(7) of the Social Security Act." As did the Bulletin issued during Hurricane Harvey, HHS' March 2020 Bulletin states:

Under these circumstances, the Secretary has exercised the authority to waive sanctions and penalties against a covered hospital that does not comply with the following provisions of the HIPAA Privacy Rule:

- *the requirements to obtain a patient's agreement to speak with family members or friends involved in the patient's care. See 45 CFR 164.510(b).*
- *the requirement to honor a request to opt out of the facility directory. See 45 CFR 164.510(a).*
- *the requirement to distribute a notice of privacy practices. See 45 CFR 164.520.*

- *the patient's right to request privacy restrictions. See 45 CFR 164.522(a).*
- *the patient's right to request confidential communications. See 45 CFR 164.522(b).*

When the Secretary issues such a waiver, it only applies: (1) in the emergency area and for the emergency period identified in the public health emergency declaration; (2) to hospitals that have instituted a disaster protocol; and (3) for up to 72 hours from the time the hospital implements its disaster protocol. When the Presidential or Secretarial declaration terminates, a hospital must then comply with all the requirements of the Privacy Rule for any patient still under its care, even if 72 hours has not elapsed since implementation of its disaster protocol.

Covered entities, business associates, and subcontractors should continue to follow the requirements of the Privacy Rule. While disclosing information to public health entities is not new, care should also be taken to consult local and state requirements for reporting communicable diseases, as well as adhering to individual state privacy and security laws related to protected health information (PHI).

Teleworking and the Security Rule

Even in emergency situations, the transmission of a patient's information needs to occur in accordance with the Security Rule. As the HHS February 2020 Bulletin states:

In an emergency, covered entities must continue to implement reasonable safeguards to protect patient information against intentional or unintentional impermissible uses and disclosures. Further, covered entities (and their business associates) must apply the administrative, physical, and technical safeguards of the HIPAA Security Rule to electronic protected health information.

Organizations should already have in place policies and procedures related to disasters (i.e., natural, manmade, cybersecurity attacks), as well as government-declared emergencies, including Disaster Recovery and Business Continuity Plans. For workforce members who already work remotely, a checklist and attestation, as well as training, should already be in place. For workforce members who typically do not telecommute, organizations should have the individual complete a checklist, verify that the attestations are truthful, provide additional training, and install any software that other remote employees have in place. Checklist items should include secure Wi-Fi and using a room outside of the purview of other family members and friends. Having a cross-cut shredder also is required under the Privacy Rule.

Employers should also keep workforce members up to date on government directives and changes in hours of operation. Ensuring continuing compliance with the Security Rule's technical, administrative, and physical safeguards is vital to avoiding another crisis—a cybersecurity attack that results in a reportable breach.

Telehealth

On March 17, 2020, CMS issued a waiver under Section 1135 to expand access to telehealth services for Medicare beneficiaries. According to a CMS fact sheet describing the waiver, *telehealth, telemedicine, and related terms generally refer to the exchange of medical information from one site to another through electronic communication to improve a patient's health. Innovative uses of this kind of technology in the provision of healthcare is increasing. And with the emergence of the virus causing the disease COVID-19, there is an urgency to expand the use of technology to help people who need routine care, and keep vulnerable beneficiaries and beneficiaries with mild symptoms in their homes while maintaining access to the care they need. Limiting community spread of the virus, as well as limiting the exposure to other patients and staff members will slow viral spread.*

Prior to the waiver, Medicare only reimbursed for telehealth in limited circumstances, such as requiring the individual receiving the service to be in a designated rural area. The telehealth service also had to be provided at certain medical facilities to be reimbursable.

The waiver, which is effective March 6, 2020, expands Medicare reimbursement for telehealth across the country, including when provided at a patient's residence. Even before the waiver, Medicare began payments for brief communications, such as virtual check-ins (short patient-initiated communications with a medical professional). Medicare Part B also separately pays medical professionals for E-visits (non-face-to-face, patient-initiated communications through an online patient portal). The Section 1135 waiver enables Medicare beneficiaries to receive a specific set of services through telehealth, including evaluation and management visits (common office visits), mental health counseling, and preventive health screenings. With respect to HIPAA, the HHS Office for Civil Rights (OCR) issued a notice of enforcement discretion for telehealth communications during the PHE. Under the notice, *[effective immediately, the HHS Office for Civil Rights (OCR) will exercise enforcement discretion and waive penalties for HIPAA violations against health care providers that serve patients in good faith through everyday communications technologies, such as FaceTime or Skype, during the COVID-19 nationwide public health emergency.*

OCR also states that providers should enable all available encryption and privacy settings when using third-party applications, inform patients of potential privacy risks, and sign a business associate agreement with vendors like Skype. Additionally, medical professionals should have a documented disclaimer that while a patient may elect to have PHI sent through an unencrypted manner, the data may be at risk to a cybersecurity incident.

It is important to note that while OCR will exercise discretion and waive penalties for HIPAA privacy and security violations in certain circumstances with the provision of telehealth, this enforcement discretion does not extend to the creation, receipt, maintenance, and transmission of PHI during regular business operations.

Conclusion

While HHS has authorized additional flexibilities during the PHE, it is imperative that providers continue to comply with HIPAA privacy and security requirements. It is also important to note that while the statute does not include a private right of action, HIPAA has been successfully used as the basis of common law negligence cases across the country, as well as class actions. If a provider is acting in good faith, then for purposes of telehealth, the likelihood of a successful lawsuit is diminished. Medical professionals, health care workers, and patients alike also must remain vigilant and take precautions against scams related to COVID-19, as the Cybersecurity and Infrastructure Security Agency (CISA) has warned. Finally, providers should exercise care when rendering telehealth services, not only for purposes of HIPAA, but also in terms of substantiating the applicable service with documentation for medical necessity and mode of transmission of the visit.

About the Author

Rachel V. Rose—Attorney at Law, PLLC (Houston, TX)—advises clients on health care, cybersecurity, and qui tam matters. She also teaches bioethics at Baylor College of Medicine. She has been consecutively named by *Houstonia Magazine* as a Top Lawyer (Health care) and to the National Women Trial Lawyer’s Top 25 and National Trial Lawyers Top 100. She can be reached at rvrose@rvrose.com.

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IMPORTANT REMINDERS

SUPERVISION OF PHYSICIAN ASSISTANTS: NOTE: ALL physician assistants MUST be supervised IN PERSON for the first 30 days of working with every new doctor of osteopath who they have a cooperating agreement with. The statute, NRS 633.469(3) states: *A supervising osteopathic physician shall provide supervision to his or her physician assistant in person at all times during the first 30 days that the supervising osteopathic physician supervises the physician assistant. The provisions of this subsection do not apply to a federally qualified health center. Regulation NAC 633.289(3)(a) states: *Except as otherwise provided in NRS 633.469, shall provide supervision in person at least once each month to the physician assistant.**

VETERANS SERVICES

Recent legislation (AB 300) provides for the outreach, education and expansion of information to veterans for service-connected disabilities and diseases, along with providing a statewide information and referral information system to the public.

The information below is also available on the title page of the Board’s web site under “Veterans Services.”

Understanding Presumptive Conditions:

<http://nsbom.org/LicensingPublic/docs/Presumptive%20Conditions%20-%20Veterans%20Services.pdf>

Types of Presumptive Conditions and Resources:

<http://nsbom.org/LicensingPublic/docs/Types%20of%20Presumptive%20Conditions.pdf>

Reporting Disciplinary/Malpractice Actions

Please Note: NRS 633.527 states all licensees are **required** to report **all** actions within 45 days of the action in which they are named. This includes disciplinary, malpractice, fulfillment and removal. The National Practitioner Data Bank (NPDB) reports to the Board all disciplinary, malpractice and positive settlement fulfillments and disciplinary action removals. Malpractice settlements involving minors (under 18 years old), must be approved by the courts. However, note the NPDB may receive settlement notification by an insurance carrier prior to court approval, starting the reporting timeline in our statute. Please communicate with your insurance company to comply with the reporting timeline.

NOTE ON LICENSE RENEWAL:

CME REGULATION REQUIREMENTS FOR CONTROLLED SUBSTANCES R116-17 (EFFECTIVE FEBRUARY 2018)

- **Osteopathic Physicians: Ten hours** of category A-1 courses
- **Osteopathic Physicians: Two hours** that relate to the misuse and abuse of controlled substances, the prescribing of opioids or addiction
- **Physician Assistants:** Included in the completion of **20 hours** of annual continuing medical education completion of at least **two hours** which must relate to the misuse and abuse of controlled substances, the prescribing of opioids or addiction

AB 474 AND REVISION (AB 239) (CONTROLLED SUBSTANCE PRESCRIBING)

- **AB 239 Revises AB 474 (2019):** http://nsbom.org/LicensingPublic/docs/AB239_EN.pdf
- **AB 474 Webinar Recording for 12/18/17:**
[http://www.nsbom.org/LicensingPublic/docs/WEBINARAB474\(121817\).mp4](http://www.nsbom.org/LicensingPublic/docs/WEBINARAB474(121817).mp4)
- Link to AB 474 law on BOM website at:
- Nevada State Medical Association: www.nvdoctors.org
- Nevada Division of Public and Behavioral Health web page, info on AB 474 and Requirement for Reporting an Overdose:
http://dph.nv.gov/Resources/opioids/Prescription_Drug_Abuse_Prevention/

OCCUPATIONAL RESOURCES

Nevada Osteopathic Medical Association (NOMA)

2255 Springdale Court, Reno, NV 89523
(702) 434-7112

nvoma@earthlink.net www.nevadaosteopathic.org

Federation of State Medical Boards (FSMB)

www.fsmb.org

NEW! Opioid and Pain Management Resource Web Page

<http://www.fsmb.org/opioids/>

American Osteopathic Association

<https://www.osteopathic.org/Pages/default.aspx>

DO YOU HAVE NEWSLETTER TOPIC SUGGESTIONS?
Please email Sandy Reed at: sreed@bom.nv.gov

PLEASE NOTE: The contents of this newsletter constitute official notice from the Board to its licensees. All licensees are responsible to read and understand the contents of this newsletter.