

**ADOPTED REGULATION OF THE NEVADA STATE BOARD OF
VETERINARY MEDICAL EXAMINERS**

LCB File No. R117-23

EXPLANATION – Matter in *italics* is new; matter in brackets ~~omitted material~~ is material to be omitted.

AUTHORITY: §§ 1-3, 5, 6, 10-12, 15, 16, 23 and 24, NRS 638.070; § 4, NRS 622.530 and 638.070; § 7, NRS 638.070, 638.100, 638.116, 638.122, 638.127, 638.128 and 638.132; § 8, NRS 638.050; § 9, NRS 638.070 and 638.1471; § 13, NRS 638.070 and 638.124; § 14, NRS 638.070 and 638.132; §§ 17-22, NRS 638.070 and 638.119.

A REGULATION relating to veterinary medicine; prescribing the requirements for licensure by endorsement as a veterinarian; requiring a veterinarian to obtain informed consent under certain circumstances; establishing provisions relating to animal transportation services; increasing certain fees; revising the duties of the Executive Director of the Nevada State Board of Veterinary Medical Examiners; revising certain administrative fines; authorizing a veterinarian to decline treatment of an animal under certain circumstances; revising provisions relating to medical records; revising provisions relating to veterinary technicians in training; revising provisions relating to the administration of a euthanasic agent by a euthanasia technician; revising provisions relating to veterinary facilities; revising provisions relating to the examination of euthanasia technicians; repealing various provisions relating to practice before the Board; making various other changes relating to the practice of veterinary medicine; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law authorizes the Nevada State Board of Veterinary Medical Examiners to adopt regulations necessary to carry out the provisions of law relating to veterinary medicine, including, without limitation, regulations governing the tasks and procedures that may be performed by a euthanasia technician. (NRS 638.070, 638.119) Existing regulations authorize a euthanasia technician to administer sodium pentobarbital to euthanize certain animals. (NAC 638.510) **Sections 17-21** of this regulation: (1) provide instead that a euthanasia technician is authorized to administer euthanasic agents to euthanize certain animals; and (2) make conforming changes to eliminate references to sodium pentobarbital. **Section 22** of this regulation provides that the license of a euthanasia technician may be suspended or revoked if he or she misuses a euthanasic agent. **Section 2** of this regulation defines "euthanasic agent."

Existing law requires certain regulatory bodies to adopt regulations providing for the issuance of a license by endorsement to engage in an occupation or profession in this State to any natural person who: (1) holds a corresponding valid and unrestricted license to engage in that occupation or profession in the District of Columbia or any state or territory of the United States;

(2) possesses qualifications that are substantially similar to the qualifications required for the issuance of a license to engage in that occupation or profession in this State; and (3) meets certain other requirements. (NRS 622.530) **Section 4** of this regulation establishes: (1) standards for the issuance of a license by endorsement to an applicant for licensure as a veterinarian; and (2) grounds for the Board to deny an application for a license by endorsement.

Section 5 of this regulation requires a veterinarian to obtain the informed consent of a client before administering any medical treatment to an animal. **Section 5** creates an exception to this requirement by authorizing a veterinarian to provide essential services to an animal without the informed consent of the client if it is necessary to save the life or relieve the suffering of the animal.

Existing regulations adopt by reference certain published ethics guidelines as the standard for professional conduct for veterinarians. (NAC 638.046) **Section 10** of this regulation: (1) authorizes a veterinarian to decline to treat an animal under certain circumstances; and (2) provides that a veterinarian who does so does not violate the principles of ethics.

Existing regulations interpret the term “willfully committing any inhumane or cruel act on any animal” to not include: (1) any emergency treatment given to an ill or injured animal without the consent of an owner if the owner is not available; and (2) the performance of euthanasia on such an animal if necessary to relieve pain and suffering. (NAC 638.049) **Section 12** of this regulation includes in this interpretation the exceptions found in **sections 5 and 10**.

Existing law exempts certain owners of an animal or certain full-time regular employees of the owner from the provisions of the Nevada Revised Statutes relating to veterinary medicine. (NRS 638.015) **Section 3** of this regulation interprets the term “owner of an animal” for the purpose of this exemption.

Section 6 of this regulation prohibits an animal transportation service from having any prescription drug or drug that does not require a prescription in any vehicle that the animal transportation service uses to transport animals.

Existing regulations: (1) set forth certain fees relating to licensure, registration and permits to practice veterinary medicine; and (2) provide that if a license, registration or permit was issued on or after June 30 of the immediately preceding even-numbered year, the Board will reduce the fee charged and collected for the biennial renewal of any license, registration or permit by 50 percent. (NAC 638.035) **Section 7** of this regulation instead provides that the Board will reduce the fee charged and collected for the application for any license, registration or permit by 50 percent if the license, registration or permit is issued on or after June 30 of the immediately preceding even-numbered year. **Section 7** also: (1) increases certain fees; and (2) sets forth fees relating to licensure as a veterinarian by endorsement.

Existing regulations require the Executive Director of the Board to: (1) write all correspondence on behalf of the Board, including the minutes of all proceedings of the Board; and (2) approve contracts and expenditures that are for an amount less than \$1,000 and are within the amount budgeted by the Board for that year. (NAC 638.0405) **Section 8** of this regulation: (1) eliminates the requirement for the Executive Director to write all correspondence on behalf of the Board; and (2) increases the maximum monetary threshold for the Executive Director to approve such contracts and expenditures from \$1,000 to \$10,000.

Existing law authorizes the Board to adopt regulations necessary to carry out the provisions of law relating to the issuance of a citation or an administrative fine to a licensee or person who is practicing veterinary medicine without a license. (NRS 638.1471) Existing regulations authorize the Board to assess on a person who practices veterinary medicine without

a license: (1) for a first violation, an administrative fine in an amount not to exceed \$1,000; (2) for a second violation, an administrative fine in an amount not to exceed \$2,500; and (3) for a third or subsequent violation, an administrative fine in an amount not to exceed \$5,000. (NAC 638.0433) **Section 9** of this regulation instead authorizes the Board to assess an administrative fine in an amount not to exceed \$5,000 for each violation committed. **Section 9** also establishes standards for determining the appropriate amount of the administrative fine.

Existing regulations provide certain requirements for the creation, maintenance and availability of veterinary medical records, including, without limitation, the requirement that: (1) a licensed veterinarian provide a copy of the medical record to certain parties not later than 48 hours after receiving a request from such parties; and (2) certain information be included in the medical record. (NAC 638.0475) **Section 11** of this regulation instead requires a licensed veterinarian to provide a copy of the medical record to certain parties not later than 5 business days after receiving a request from such parties. **Section 11** creates an exception to the requirement that certain information be included in a medical record by authorizing a licensed veterinarian to send the medical record of an animal that does not comply with such a requirement to another licensed veterinarian during an emergency.

Existing regulations: (1) set forth the requirements for a person to register as a veterinary technician in training; and (2) authorize the Board to grant an extension of the period of registration. (NAC 638.0525) **Section 13** of this regulation sets forth the requirements that a veterinary technician in training must meet to obtain an extension of the period of registration.

Existing regulations require a veterinarian who is in charge of a facility to notify the Board in writing if the roster of veterinarians who are permanently employed and practice veterinary medicine at the facility changes. (NAC 638.0606) **Section 14** of this regulation eliminates this requirement.

Existing regulations require: (1) the Board to examine each euthanasia technician trainee; and (2) the written examination to include certain subjects. (NAC 638.475) **Section 16** of this regulation eliminates the requirement for the written examination to include certain subjects.

Section 24 of this regulation repeals obsolete provisions relating to practice and procedure before the Board, fees and examinations. **Sections 15 and 23** of this regulation make conforming changes to eliminate obsolete references to sections of the Nevada Administrative Code that are repealed by **section 24**.

Section 1. Chapter 638 of NAC is hereby amended by adding thereto the provisions set forth as sections 2 to 6, inclusive, of this regulation.

Sec. 2. 1. *“Euthanasic agent” means any prescription drug, regardless of the method in which the drug is administered, that is administered:*

(a) To terminate the life of an animal; or

(b) To ease the suffering of an animal at the time the termination of life is performed.

2. *The term includes, without limitation, alpha-2 agonists, ketamine and phenothiazine.*

Sec. 3. *For the purposes of subsection 5 of NRS 638.015, the Board will interpret the term “owner of an animal” to mean:*

1. A person who owns an animal:

(a) As a pet;

(b) For purposes of breeding; or

(c) As livestock;

2. A nonprofit corporation or local government organization that temporarily possesses an animal for the purpose of allowing members of the public to adopt the animal; and

3. A facility or business engaged in clinical or any other type of research that involves animals.

Sec. 4. *1. Except as otherwise provided in subsection 2, the Board may issue a license by endorsement to an applicant for licensure as a veterinarian who meets the requirements set forth in this section. An applicant may submit to the Board an application for such a license if the applicant:*

(a) Holds a corresponding valid and unrestricted license as a veterinarian in the District of Columbia or any state or territory of the United States;

(b) Possesses qualifications that are substantially similar to the qualifications required for issuance of a license as a veterinarian in this State;

(c) Except as otherwise provided in NAC 638.0435, has successfully completed the North American Veterinary Licensing Examination administered by the International Council for Veterinary Assessment, or its successor organization, or a similar examination that was in effect at the time the applicant obtained his or her initial license to engage in the practice of

veterinary medicine in the District of Columbia or any state or territory of the United States;
and

(d) Has actively engaged in the practice of veterinary medicine as a veterinarian in the District of Columbia or any state or territory of the United States for not less than 5 years immediately preceding the date on which the applicant submitted his or her application.

2. An applicant for a license by endorsement pursuant to this section must submit to the Board:

(a) An application on a form provided by the Board;

(b) An affidavit stating that the information contained in the application and any accompanying material is true and complete;

(c) The fees prescribed in NAC 638.035;

(d) A complete set of his or her fingerprints and written permission authorizing the Board to forward the fingerprints to the Central Repository for Nevada Records of Criminal History for submission to the Federal Bureau of Investigation for its report or proof that the applicant has previously passed a comparable criminal background check, as required pursuant to NRS 622.530; and

(e) The statement required by NRS 425.520.

3. The Board will not issue a license by endorsement pursuant to this section:

(a) If the applicant has been convicted of, or entered a plea of nolo contendere to, a felony related to the practice of veterinary medicine, or any offense involving moral turpitude, unless the Board has previously taken disciplinary action against the applicant relating to the matter;
and

(b) Unless the applicant:

(1) Has not been disciplined by the corresponding regulatory authority of the District of Columbia or any state or territory in which the applicant currently holds or has held a license as a veterinarian;

(2) Has not been held civilly or criminally liable in the District of Columbia or any state or territory of the United States for misconduct relating to the practice of veterinary medicine;

(3) Has not had a license as a veterinarian suspended or revoked in the District of Columbia or any state or territory of the United States;

(4) Has not been refused a license as a veterinarian in the District of Columbia or any state or territory of the United States for any reason; and

(5) Does not have pending any disciplinary action concerning his or her license as a veterinarian in the District of Columbia or any state or territory of the United States.

4. A license by endorsement as a veterinarian issued pursuant to this section may be issued at a meeting of the Board or in between meetings of the Board by the President and Executive Director of the Board. Such action is deemed to be an action of the Board.

Sec. 5. 1. *Except as otherwise provided in subsection 2, a veterinarian must obtain the informed consent of a client for any medical treatment of an animal.*

2. In an emergency, a veterinarian may provide essential services to an animal without the informed consent of the client if it is necessary to save the life or relieve the suffering of the animal.

3. As used in this section:

(a) "Essential services" means:

(1) Administering a euthanasic agent to relieve the suffering of the animal; or

(2) Stabilizing the animal for transport to another veterinary facility.

(b) “Informed consent” means that the client, after having been informed in a manner that would be understood by a reasonable person of the diagnostic and treatment options, risk assessment and prognosis for the animal and of an estimate of the fees expected for provision of veterinary services to be rendered to the animal, has consented to the recommended treatment.

Sec. 6. 1. *Except as otherwise provided in subsection 2, an animal transportation service may not have any prescription drug or any other drug for which a prescription is not required in any vehicle that the animal transportation service uses to transport animals.*

2. An animal transportation service may administer supplemental oxygen to an animal:

(a) In the vehicle that the animal transportation service uses to transport the animal;

(b) Through an exogenous application; and

(c) As needed or as directed by the referring veterinarian of the animal.

3. *As used in this section, “animal transportation service” means a business which transports an animal to a veterinary facility for a fee at the request of the owner of the animal.*

Sec. 7. NAC 638.035 is hereby amended to read as follows:

638.035 1. Except as otherwise provided in subsections 2 and 3, the Board will charge and collect the following fees:

For an application and examination for a license to practice veterinary

medicine ~~for a license to practice as a diplomate~~..... ~~[\$400]~~ \$500

For an application for a license by endorsement to practice veterinary

medicine500

<i>For an application for a license to practice veterinary medicine as a</i>	
<i>diplomate</i>	500 500
For an application for a license to practice as a veterinary technician.....	200 220
For an application or examination for a license to practice as a euthanasia	
technician.....	400 500
For a 2-year registration to practice as a veterinary technician in training	50 60
For a permit to operate a facility owned by a licensed veterinarian, other than a	
mobile clinic	400 500
For a permit to operate a facility not owned by a licensed veterinarian, other	
than a mobile clinic	600 700
For a permit to operate a mobile clinic	100 150
For a permit to operate a nonprofit facility	200
For a registration to practice animal chiropractic.....	100 200
For a registration to practice animal physical therapy	100 200
For a registration to practice as an equine dental provider	200 220
For a temporary license to practice veterinary medicine	100 150
For the reinstatement of a veterinary or diplomate license	400 525
For the reinstatement of a veterinary technician license	200
For the biennial renewal of an active license to practice veterinary medicine ,	
<i>including, without limitation, a license by endorsement and a diplomate</i>	
<i>license</i>	500
For the biennial renewal of an inactive license to practice veterinary medicine	260 275
For the biennial renewal of a license to practice as a veterinary technician	150

For the biennial renewal of a license to practice as a euthanasia technician.....	{200} 250
For the biennial renewal of a registration to practice as an animal physical therapist	{50} 200
For the biennial renewal of a registration to practice as an animal chiropractor	{50} 200
For the biennial renewal of a registration to practice as an equine dental provider.....	200
For the biennial renewal of a permit for a facility owned by a licensed veterinarian, other than a mobile clinic	{200} 400
For the biennial renewal of a permit for a facility not owned by a licensed veterinarian, other than a mobile clinic	{600} 700
For the biennial renewal of a permit to operate a mobile clinic.....	100
For the biennial renewal of a permit for a nonprofit facility.....	200
For a duplicate of a license, registration or permit described in this section	{10} 20

2. If an applicant or licensee is an active member of, or the spouse of an active member of, the Armed Forces of the United States, a reserve component thereof or the National Guard, the Board will charge and collect one-half of the fee established pursuant to subsection 1.

3. The Board will reduce the fee charged and collected for the ~~{biennial renewal of}~~ *application for* any license, registration or permit set forth in subsection 1, including any fee reduced pursuant to subsection 2, by 50 percent if the license, registration or permit ~~{was}~~ *is* issued on or after June 30 of the immediately preceding even-numbered year.

4. The fees charged and collected pursuant to this section are not refundable.

5. For the purposes of this section, a facility is “owned by a licensed veterinarian” if one or more licensed veterinarians hold at least 10 percent of the total ownership interest, solely or jointly, of the facility.

Sec. 8. NAC 638.0405 is hereby amended to read as follows:

638.0405 The Executive Director of the Board shall:

1. ~~Write all correspondence on behalf of the Board, including the minutes of all proceedings of the Board.~~
- ~~—2.~~ Keep an account and record of all receipts and disbursements of the Board.
- ~~3.~~ 2. Keep a record of all persons currently licensed by the Board and all facilities which have been issued a permit to operate by the Board.
- ~~4.~~ 3. Employ, direct, evaluate and, if appropriate, discipline or terminate the employment of all personnel who perform clerical and administrative functions for the Board.
- ~~5.~~ 4. Approve contracts and expenditures that are for an amount less than ~~[\$1,000]~~ **\$10,000** and are within the amount budgeted by the Board for that year.
- ~~6.~~ 5. Administer, in accordance with applicable laws and regulations, the operations of the Board and the policies and procedures concerning its budget.
- ~~7.~~ 6. Review each complaint before it is investigated.
- ~~8.~~ 7. Report directly to the Board.
- ~~9.~~ 8. Perform such other duties that are directed by the Board or are otherwise necessary to protect and promote the interest of the public relating to the practice of veterinary medicine.

Sec. 9. NAC 638.0433 is hereby amended to read as follows:

638.0433 1. In addition to any other penalty provided by law, the Board may issue a citation to a person who practices veterinary medicine without a license issued pursuant to the provisions of this chapter or chapter 638 of NRS.

2. The Board may assess ~~†~~

~~—(a) For a first violation, an administrative fine in an amount not to exceed \$1,000.~~

~~—(b) For a second violation, an administrative fine in an amount not to exceed \$2,500.~~

~~—(c) For a third or subsequent violation,†~~ an administrative fine in an amount not to exceed \$5,000 ~~†~~ *for each violation. In determining the appropriate amount of the administrative fine, the Board will consider:*

(a) The veterinary services performed by the person who practiced veterinary medicine without a license;

(b) The degree of physical harm suffered by the animal;

(c) The number and types of similar:

(1) Complaints received against the person by the Board; and

(2) Violations committed by the person in this State;

(d) The person’s history or record of similar violations committed outside of this State; and

(e) Any other facts or circumstances that the Board determines is relevant to protect animals and the public from any future harm by the person.

3. A citation issued pursuant to this section must be in writing and describe with particularity the nature of the violation.

Sec. 10. NAC 638.046 is hereby amended to read as follows:

638.046 1. The Board adopts by reference the November 2003 revision of the “Principles of Veterinary Medical Ethics” of the American Veterinary Medical Association as a standard for

professional conduct. A violation of the provisions of the principles constitutes cause for disciplinary action.

2. The November 2003 revision of the “Principles of Veterinary Medical Ethics” of the American Veterinary Medical Association is available from the Board at its office, or at the Internet address <https://nvvetboard.nv.gov>, free of charge.

3. A veterinarian may decline to treat an animal and does not violate the provisions of the principles adopted by reference pursuant to subsection 1 if the veterinarian:

(a) Notifies the owner of an animal or the person delivering the animal for treatment that the veterinarian may deny to treat the animal if the owner or person exhibits conduct that is threatening, harmful, dangerous or abusive towards the veterinarian or any member of the staff at a veterinary facility; and

(b) Believes that the behavior of the owner of the animal or person delivering the animal for treatment is threatening, harmful, dangerous or abusive. The belief of a veterinarian may be based on one or more incidents.

Sec. 11. NAC 638.0475 is hereby amended to read as follows:

638.0475 1. Each licensed veterinarian shall maintain in this State for at least 4 years a separate medical record of each animal receiving veterinary services, including, without limitation, an examination conducted pursuant to NAC 638.610, from the licensed veterinarian or under his or her supervision. The records must be available for inspection by the Board or its representative or the owner of the animal during normal business hours at least 5 *business* days each week. Except as otherwise provided in this subsection, the licensed veterinarian shall provide a copy of that record to the Board or its representative or the owner of the animal receiving veterinary services not later than ~~48 hours~~ *5 business days* after receiving a request

from the Board or its representative or the owner of the animal. The licensed veterinarian is not required to provide a copy of any radiographs or other diagnostic images in the medical record to the owner of the animal receiving veterinary services.

2. ~~The~~ *Except as otherwise provided in subsection 10, the* medical record must contain the following information, in legible form:

- (a) The name, address and telephone number of the animal's owner;
- (b) The name or identifying number, or both, of the animal;
- (c) The age, sex, weight and breed of the animal;
- (d) The dates of care, custody or treatment of the animal;
- (e) Documentation of the informed consent of the client for medical treatment of the animal;
- (f) A short history of the animal's condition as it pertains to the animal's medical status;
- (g) The results of and notations from an examination of the animal, including, without limitation, the temperature, pulse and respiration rate of the animal and laboratory data pertaining to the animal;
- (h) The diagnosis or condition at the beginning of custody of the animal, including, without limitation, results of tests;
- (i) The immunization record of the animal;
- (j) All clinical information pertaining to the animal, including, without limitation, sufficient information to justify the diagnosis or determination of the medical status of the animal and to warrant any treatment recommended for or administered to the animal;
- (k) The notes taken during surgery, including, without limitation:
 - (1) The name and quantity of any drug administered for anesthesia and preanesthesia;
 - (2) The procedure performed;

(3) The times at which the surgery begins and ends;

(4) If the surgery is performed in a veterinary facility using general anesthesia:

(I) The vital signs of the animal at the beginning and end of the surgery that are appropriate to the species and condition of the animal at the time of surgery, which may include, without limitation, the temperature, pulse, heart rate, respiration, blood pressure, capillary refill time and oxygen levels of the animal;

(II) The vital signs of the animal recorded at least every 5 minutes during the surgery, including, without limitation, the pulse, heart rate and respiration of the animal; and

(III) If any of the information required pursuant to this subparagraph is generated by an automated device, an indication that the information generated by the automated device was regularly reviewed and analyzed by a veterinarian, veterinary technician or veterinary assistant during the surgery;

(l) Any medication and treatment administered, including, without limitation, the amount and frequency;

(m) The progress and disposition of the case;

(n) The name of each person who is not an employee of the veterinarian who provided professional advice or performed treatments, examinations or other services pertaining to the animal;

(o) The signature, initials or other identifying mark of the person who made the entry in the medical record;

(p) Any radiographs other than intraoral dental radiographs. Each radiograph other than an intraoral dental radiograph must be labeled on the image as follows:

(1) The name of the veterinarian or facility that took the radiograph;

- (2) The name or identifying number, or both, of the animal;
- (3) The name of the animal's owner;
- (4) The date on which the radiograph was taken; and
- (5) The anatomical orientation depicted by the radiograph; and

(q) Any intraoral dental radiographs or other diagnostic images. For each intraoral dental radiograph or other diagnostic image, the medical record must include the information set forth in subparagraphs (1) to (5), inclusive, of paragraph (p) with regard to the intraoral dental radiograph or other diagnostic image. That information may be included:

- (1) In a hard copy of the medical record if the medical record is maintained as a written record; or

- (2) In the computer file which contains the intraoral dental radiograph or other diagnostic image if the medical record is maintained as a computer record.

3. The Board or its representative will evaluate each medical record inspected pursuant to subsection 1 for compliance with the provisions of this chapter and chapter 638 of NRS.

4. Each radiograph or other diagnostic image is the property of the veterinarian who caused it to be prepared. A radiograph or other diagnostic image may be released to the owner of the animal. A radiograph or other diagnostic image must be released within 48 hours after the request is made to another veterinarian who has the authorization of the owner of the animal to which it pertains. The radiograph or other diagnostic image must be returned within a reasonable time to the veterinarian to whom it belongs.

5. The medical records required by this section must be written records or computer records. If the medical records are computer records:

- (a) The security of the computer must be maintained.

(b) The computer records must be backed-up daily and cumulatively backed-up monthly using technology designed to store data permanently.

(c) The computer records must be inalterable or clearly indicate when they have been altered and the manner in which they have been altered.

(d) The computer records must not contain information relating to a physical examination that is automatically generated by the computer.

(e) Any such computer records relating to the administration, prescribing or dispensing of a prescription drug must contain the initials of the person who administered, prescribed or dispensed the prescription drug. The initials of the person who administered, prescribed or dispensed the prescription drug may be manually entered into the computer record or automatically generated by the computer.

6. If a medical record is a written record, information contained in the medical record must not be removed, erased, redacted or otherwise made unreadable. Any addition, supplementation or other alteration to a written record must include, without limitation, the date on which the addition, supplementation or other alteration was made and the signature, initials or other identifying mark of the person who made the addition, supplementation or other alteration to the written record.

7. ~~§~~ *Except as otherwise provided in subsection 10 and in* addition to the requirements of subsection 2, if a licensed veterinarian is not associated with a veterinary facility, and any controlled substances or prescription drugs are administered to the animal, the medical record required by this section must include the same information that a veterinary facility which:

(a) Maintains a stock of controlled substances for administration and dispensing is required to ensure is contained in a log for the veterinary facility pursuant to paragraphs (d) and (e) of subsection 3 of NAC 638.0628; and

(b) Dispenses prescription drugs is required to ensure is contained in the medical records of the animal pursuant to paragraph (e) of subsection 1 of NAC 638.0629.

8. In a practice concerned with herds of animals, records must be kept on each herd and may be kept on individual animals.

9. If a veterinarian ceases his or her practice without providing for the continuation of treatment of the animals under the veterinarian's care, the President of the Board may appoint a master to supervise his or her records, the treatment of those animals and the mailing of notices to the owners of the animals which had been under his or her care.

10. *If, during an emergency, a veterinary facility requests the medical record of an animal from another veterinary facility, the veterinary facility that is in possession of the medical record must provide the medical record to the other veterinary facility as soon as practicable. Such a medical record:*

(a) Does not need to comply with the requirements of subsections 2 and 7, as applicable; and

(b) May be sent to the veterinary facility requesting the medical record in the current state of completion that the medical record is at the time of the request.

11. The medical record of an animal is confidential and may not be released except:

(a) As otherwise provided in ~~subsection~~ *subsections 1 ~~+~~ and 10;*

(b) In response to a court order; or

(c) As required to ensure compliance with any federal, state and local statutes, regulations or ordinances.

~~11.1~~ **12.** Nothing in this section is intended to prevent the sharing of veterinary medical information among veterinarians, law enforcement officials, and members, agents or officers of a society for the prevention of cruelty to animals who are acting to protect the welfare of an animal.

~~12.1~~ **13.** As used in this section, “other diagnostic image”:

(a) Includes, without limitation, an ultrasound, magnetic resonance imaging and computerized axial tomography scan; and

(b) Does not include a radiograph.

Sec. 12. NAC 638.049 is hereby amended to read as follows:

638.049 As used in NRS 638.1408, the Board will not interpret “willfully committing any inhumane or cruel act on any animal” to include:

1. Any emergency treatment given to an ill or injured animal without the consent of an owner if the owner is not available; ~~10.1~~

2. The performance of euthanasia on such an animal if necessary to relieve pain and suffering ~~1.1~~;

3. *The performance of any essential service on an animal without the consent of an owner if necessary to save the life or relieve the suffering of the animal; or*

4. *The declination of treatment of an animal by a veterinarian pursuant to NAC 638.046.*

Sec. 13. NAC 638.0525 is hereby amended to read as follows:

638.0525 1. A person may perform the tasks of a veterinary technician under the immediate supervision of a supervising veterinarian or licensed veterinary technician while the

person is receiving the training and experience required by paragraph (h) of subsection 2 if he or she is registered with the Board pursuant to this section.

2. To be registered as a veterinary technician in training, a person must:

(a) Submit to the Board an application on a form prescribed by the Board;

(b) Submit to the Board a letter of recommendation written by the veterinarian in charge of the veterinary facility where the person is employed or will be employed;

(c) Be 18 years of age or older;

(d) Have a high school diploma or equivalent certificate;

(e) Be of good moral character;

(f) Be a citizen of the United States or lawfully entitled to remain and work in the United States;

(g) Be:

(1) A fourth-year student enrolled in a 4-year program, a second-year student enrolled in a 2-year program or a student enrolled in an accelerated program and the program of training must be accredited by the Committee on Veterinary Technician Education and Activities of the American Veterinary Medical Association or be approved by the Board;

(2) A person who has graduated from a program of training described in subparagraph (1) and is scheduled to take, or has taken but not yet received a score for, the Veterinary Technician National Examination; or

(3) A person who has received a bachelor of science degree and has:

(I) Completed at least 1,000 hours of work experience at one or more veterinary facilities; and

(II) Satisfied the requirements of section 1 of LCB File No. R083-22;

(h) Participate in training while on the job and acquire experience that is commensurate with the duties of his or her employment, which must be documented in writing, on a form provided by the Board, by each supervising veterinarian or licensed veterinary technician who supervises the person while he or she is participating in such training and acquiring such experience; and

(i) Pay to the Board the fee required pursuant to NAC 638.035.

3. After confirming that an applicant complies with all the requirements of subsection 2, the Executive Director of the Board shall, unless he or she has good cause to deny the registration, issue a letter of registration for a veterinary technician in training to the veterinarian in charge of the veterinary facility where the trainee is employed or will be employed.

4. A registration issued pursuant to this section between:

(a) January 1 and August 31 of any year expires on September 1 of the next subsequent year; and

(b) September 1 and December 31 of any year expires on September 1 of the year immediately following the next subsequent year,

↳ unless, *pursuant to subsection 5 or 6*, the Board grants an extension of the period of registration ~~+~~ *for not more than 1 year*.

5. The Board may grant a veterinary technician in training who satisfies the requirements of subparagraph (1) of paragraph (g) of subsection 2 an extension of the period of registration if the veterinary technician in training appears before the Board to apply for an extension.

6. The Board may grant a veterinary technician in training who satisfies the requirements of subparagraph (2) or (3) of paragraph (g) of subsection 2 an extension of the period of registration if the veterinary technician in training submits an application on a form

prescribed by the Board not less than 30 days before the date on which the registration will expire. The application must be accompanied by satisfactory proof that the applicant:

(a) Is scheduled to take, or has taken but not yet received a score for, the Veterinary Technician National Examination;

(b) Has completed at least 10 hours of continuing education related to the practice of a veterinary technician; and

(c) Has satisfied the requirements of subsections 2 and 3 of NAC 638.0527.

7. The Board may grant a veterinary technician in training who satisfies the requirements of subparagraph (2) or (3) of paragraph (g) of subsection 2 only three extensions of the period of registration pursuant to subsection 6. A veterinary technician in training who has received three extensions of the period of registration must appear before the Board to apply for a subsequent extension.

Sec. 14. NAC 638.0606 is hereby amended to read as follows:

638.0606 The veterinarian who is in charge of a facility shall notify the Board in writing if

~~†~~

~~1. The~~ *the* person registered with the Board as the veterinarian who is in charge of the facility resigns or otherwise leaves that position. ~~†~~ ~~or~~

~~2. The roster of veterinarians who are permanently employed and practice veterinary medicine at the facility changes.~~

~~†~~ The written notice must be submitted to the Board not more than 20 days after any such change is made.

Sec. 15. NAC 638.370 is hereby amended to read as follows:

638.370 The Board may request briefs to be filed within such time as may be allowed by the Board. The brief must be accompanied by proof of service . ~~in accordance with NAC 638.230.~~

Sec. 16. NAC 638.475 is hereby amended to read as follows:

638.475 ~~1.~~ After each training course, the Board or its representative will ~~examine~~ *administer a written examination to* each trainee.

~~2. The written examination must include:~~

~~—(a) The theory and history of the methods of euthanasia;~~

~~—(b) Anatomy of animals;~~

~~—(c) Handling of animals;~~

~~—(d) Medications;~~

~~—(e) Recordkeeping; and~~

~~—(f) Techniques of injection.~~

~~3. The practical examination must include:~~

~~—(a) Intravenous injection of an animal;~~

~~—(b) Handling of an animal;~~

~~—(c) Verification of death;~~

~~—(d) Euthanasia of an animal;~~

~~—(e) Demonstration of proper recordkeeping;~~

~~—(f) Demonstration of understanding and concern for the needs of an animal;~~

~~—(g) Demonstration of ability to handle difficult situations; and~~

~~—(h) Communication with a handler.~~

~~4. The practical examination may include:~~

~~—(a) Intracardiac injection of an animal; or~~

~~—(b) Intraperitoneal injection of an animal.~~

Sec. 17. NAC 638.510 is hereby amended to read as follows:

638.510 Before a euthanasia technician may possess and administer ~~{sodium pentobarbital.}~~

a euthanasic agent:

1. The euthanasia technician must register with the State Board of Pharmacy; and
2. The agency employing the euthanasia technician must register with the Drug

Enforcement Administration of the Department of Justice.

Sec. 18. NAC 638.520 is hereby amended to read as follows:

638.520 1. If, within 30 seconds after an intravenous injection, 15 minutes after an intraperitoneal injection or 60 minutes after an oral administration of ~~{sodium pentobarbital.}~~ *a*

euthanasic agent, an animal demonstrates:

- (a) Consciousness;
- (b) Indications of breathing or a heartbeat;
- (c) Capillary response in the gums; or
- (d) Corneal or pupillary reflexes,

↪ the euthanasia technician shall administer another dose of ~~{sodium pentobarbital.}~~ *a euthanasic agent.*

2. The euthanasia technician may inject an animal with ~~{sodium pentobarbital.}~~ *a euthanasic agent* if the animal is unconscious.

3. To verify death, the euthanasia technician shall examine each animal and find:

- (a) Rigor mortis; or
- (b) Lack of heartbeat, respiration, pupillary reflex and corneal reflex.

Sec. 19. NAC 638.525 is hereby amended to read as follows:

638.525 A euthanasia technician may orally administer ~~{sodium pentobarbital,}~~ *a euthanasic agent* in accordance with the instructions of the manufacturer to an animal that can be captured or restrained only with serious danger to human safety.

Sec. 20. NAC 638.530 is hereby amended to read as follows:

638.530 1. An agency shall provide for the storage and security of ~~{sodium pentobarbital,}~~ *all euthanasic agents*, needles and syringes.

2. If a euthanasia technician is not on duty, ~~{sodium pentobarbital,}~~ *all euthanasic agents*, needles and syringes must be kept in a metal safe which is securely attached to the building in which it is housed.

3. If ~~{sodium pentobarbital,}~~ *euthanasic agents*, needles and syringes are stored in a safe that can be opened by an employee other than the euthanasia technician, the ~~{sodium pentobarbital,}~~ *euthanasic agents* must be kept in the safe in a separate locked container made of metal that is accessible only by the euthanasia technician.

4. The temperature and environment in the safe must be adequate to assure the proper storage of the ~~{sodium pentobarbital,}~~ *euthanasic agents*.

5. The euthanasia technician shall label each container of ~~{sodium pentobarbital,}~~ *a euthanasic agent* with the name of the ~~{drug,}~~ *euthanasic agent*, the strength, the date that the ~~{sodium pentobarbital,}~~ *euthanasic agent* was received or prepared and the expiration date of the ~~{drug,}~~ *euthanasic agent*.

6. If a euthanasia technician is on duty and an animal is being euthanized, the euthanasia technician may keep ~~{sodium pentobarbital,}~~ *euthanasic agents*, needles and syringes in a temporary storage cabinet that is constructed of strong material and locked. Only the euthanasia technician may have the key to the cabinet.

Sec. 21. NAC 638.535 is hereby amended to read as follows:

638.535 1. An agency or a euthanasia technician shall keep a record of all ~~{sodium pentobarbital}~~ *euthanasic agents* received and used by the agency.

2. The record must contain:

(a) A weekly verification of the stock of ~~{sodium pentobarbital}~~ *euthanasic agents*, signed by the euthanasia technician.

(b) A notation of the date and amount of ~~{sodium pentobarbital}~~ *any euthanasic agent* in a container each time that the ~~{drug}~~ *euthanasic agent* is removed from secure storage.

(c) The species and weight of each animal to which ~~{sodium pentobarbital}~~ *a euthanasic agent* is administered.

(d) The amount of ~~{sodium pentobarbital}~~ *euthanasic agent* used for each administration.

(e) The name or initials of the euthanasia technician who administered ~~{sodium pentobarbital}~~ *the euthanasic agent*.

(f) A notation of any waste of ~~{sodium pentobarbital}~~ *a euthanasic agent*, signed by the euthanasia technician who administered the ~~{drug}~~ *euthanasic agent*.

(g) A notation of the disposal of *any* expired or unwanted ~~{sodium pentobarbital}~~ *euthanasic agent*.

3. A euthanasia technician shall file all records in chronological order in a binder that is labeled with the name of the agency. The binder must remain at the agency and be available to the Board or its representative for inspection.

4. An agency shall keep all records for not less than 4 years.

Sec. 22. NAC 638.555 is hereby amended to read as follows:

638.555 The license of a euthanasia technician may be suspended or revoked if he or she fails to perform his or her duties properly or misuses ~~sodium pentobarbital~~ *a euthanasic agent*. As used in this section, “misuse” includes selling or stealing ~~sodium pentobarbital~~ *a euthanasic agent*, personal use of ~~sodium pentobarbital~~ *a euthanasic agent* or assisting another to misuse ~~sodium pentobarbital~~ *a euthanasic agent*.

Sec. 23. NAC 639.648 is hereby amended to read as follows:

639.648 1. A licensed veterinarian may engage in a consignment with respect to an approved drug if:

(a) The licensed veterinarian is a holder of a certificate of registration pursuant to NAC 639.7423.

(b) The wholesaler is a licensed wholesaler.

(c) The pharmacy is a licensed pharmacy.

(d) The approved drug is not for human consumption.

(e) The licensed veterinarian has established a veterinarian-client-patient relationship *pursuant to NRS 638.1521* concerning the nonhuman animal for which the licensed veterinarian prescribes the approved drug.

(f) The licensed veterinarian provides written notice to the client that the approved drug will be consigned to a licensed pharmacy for dispensing. Such a notice must include, without limitation:

- (1) The name of the licensed pharmacy;
- (2) The contact information of the licensed pharmacy; and
- (3) A statement that the client may request a written prescription and have the prescription filled at another location of the client’s choosing.

(g) The client consents in writing to the consignment of the approved drug.

2. A licensed veterinarian who consigns an approved drug for dispensing shall keep complete and accurate records of each approved drug consigned pursuant to the requirements set forth in NRS 453.246 and 454.286 and NAC 639.7423.

3. Upon prescribing an approved drug that will be consigned to a pharmacy for dispensing and after review of the medical record of the animal, a licensed veterinarian shall counsel the client on any matters which will enhance therapy for the animal through the approved drug. The counseling must be in person if practicable, or by telephone or in writing if the client is not present. Additional information may be used to supplement counseling when appropriate, including, without limitation, leaflets, pictogram labels and video programs.

~~{4.— As used in this section, “veterinarian-client-patient relationship” has the meaning ascribed to it in NAC 638.0197.}~~

Sec. 24. NAC 638.015, 638.0195, 638.0197, 638.090, 638.100, 638.110, 638.160, 638.180, 638.200, 638.230, 638.240, 638.260, 638.300, 638.310, 638.390, 638.400, 638.480, 638.495 and 638.732 are hereby repealed.

TEXT OF REPEALED SECTIONS

638.015 “Solicitation” defined. (NRS 638.070) “Solicitation” means the use of direct-mail advertising which is directed to persons other than clients, or the use or employment of

solicitors to contact persons, other than clients, directly to solicit animals for treatment by the veterinarian.

638.0195 “Practice of veterinary medicine” interpreted. (NRS 638.070) The Board will interpret the term “practice of veterinary medicine,” as defined in NRS 638.008, to exclude:

1. A veterinarian or veterinary technician who lectures, teaches, administers a practical examination or conducts a laboratory demonstration in a facility in connection with a seminar or course of continuing education for veterinarians or veterinary technicians.

2. A person who is a graduate of a school of veterinary medicine that is not accredited by the Council on Education of the American Veterinary Medical Association and who is preparing for a clinical proficiency examination administered by the American Veterinary Medical Association for the purpose of acquiring an educational certificate issued by the Educational Commission for Foreign Veterinary Graduates of the American Veterinary Medical Association or its successor organization as described in paragraph (b) of subsection 2 of NRS 638.100.

638.0197 “Veterinarian-client-patient relationship” interpreted. (NRS 638.070)

For the purposes of this chapter, a veterinarian has a “veterinarian-client-patient relationship” concerning an animal if the veterinarian satisfies the conditions set forth in subsection 3 of NRS 638.1521.

638.090 Classification of parties. (NRS 638.070)

1. Parties to proceedings before the Board must be styled petitioner, complainant, respondent, intervener or interested party, according to the nature of the proceedings and the relationship of the parties.

2. Any person who petitions for affirmative relief, other than a complainant, must be styled “petitioner.”

3. A person who complains to the Board of any act or of any person must be styled “complainant.”
4. Any person against whom any complaint is filed or investigation initiated must be styled “respondent.”
5. Any person, other than the original parties to the proceeding, who may be directly and substantially affected by the proceeding must, upon securing an order from the Board or presiding officer granting leave to intervene, be styled “intervener.” The granting of leave to intervene, or otherwise appear, in any matter or proceeding, is not construed to be a finding or determination of the Board that the party will or may be a party aggrieved by any ruling, order or decision of the Board for purposes of a court review or appeal.
6. Any person who believes that he or she may be affected by a proceeding, but who does not seek to participate in a proceeding, must be styled “interested party.”

638.100 Staff of Board may be party to proceeding. (NRS 638.070) Members of the Board’s staff may appear at any hearing. The staff has all the rights of participation as a party to the proceeding.

638.110 Appearances. (NRS 638.070)

1. At any hearing, all parties named in NAC 638.090, except interested parties, are entitled to enter an appearance, to introduce evidence, examine and cross-examine witnesses, make arguments, and generally participate in the conduct of the proceeding. Interested parties may be acknowledged to state their possible interest.
2. Parties shall enter their appearance at the beginning of a hearing or at any time as may be designated by the presiding officer by giving their names and addresses and stating their position

or interest to the presiding officer. This information must be recorded in the record of the hearing.

638.160 Captions, amendments and construction of pleadings. (NRS 638.070)

1. Pleadings before the Board must be styled petitions, accusations, answers, motions, oppositions and replies.
2. The Board may, when substantial rights of the parties are not violated, allow any pleading to be amended or corrected or allow any omission to be supplied.
3. All pleadings must be liberally construed with a view to effect justice between the parties. The Board or presiding officer will, at every stage of any proceeding, disregard errors or defects in the pleadings or proceedings which do not affect the substantial rights of the parties.

638.180 Petitions. (NRS 638.070) All pleadings praying for affirmative relief, other than accusations or answers, including requests for declaratory orders, advisory opinions, and requests for the adoption, filing, amendment or repeal of any regulation, must be styled “petitions.” All petitions must set forth the full name and post office address of the petitioner and must be signed by the petitioner.

638.200 Motions. (NRS 638.070)

1. A motion is a request directed at the Board’s authority to act on a given subject.
2. All motions, unless made during a hearing, must be in writing.
3. All written motions must set forth the nature of relief sought and the grounds for the relief requested.
4. Except as otherwise provided in NAC 638.271, a motion related to a hearing must be filed not later than 20 days before the scheduled date of the hearing.

5. A party desiring to oppose a motion may serve and file a written response to the motion not later than 10 days after the motion was served on the party.

6. The moving party may serve and file a written reply only if an opposition to the motion has been served and filed.

7. A decision must be rendered without oral argument unless oral argument is requested by the Board, in which event the Board will set a date and time for hearing.

638.230 Proof of service. (NRS 638.017, 638.070) There must appear on all documents required to be served by the Board, other than decisions or orders, an acknowledgment of service or the following certificate:

I hereby certify that I have this day served the foregoing document upon all parties of record in this proceeding (by delivering a copy in person to) (by mailing a copy, properly addressed, with postage prepaid, to).

Dated atthis(day) of (month) of (year)

.....

Signature

638.240 General requirements. (NRS 638.070)

1. Upon its own initiative, or following receipt of a verified complaint, the Board may cause an accusation to be filed alleging one or more grounds for disciplinary action arising pursuant to NRS 638.140. Facts constituting grounds for disciplinary action must be stated with such particularity to enable the respondent to identify the actions in question.

2. All applicable citations, statutes, regulations or orders of the Board must be stated together with the dates on which the acts or omissions occurred.

3. If more than one cause of action is alleged, each cause of action must be stated and numbered separately.

638.260 Notice; location. (NRS 638.070)

1. Hearings must be held before the Board. A quorum of the Board is sufficient to convene any hearing.

2. Notice of the hearing will include:

(a) A statement of the time, place and nature of the hearing.

(b) A statement of the legal authority and jurisdiction under which the hearing is to be held.

(c) A reference to the particular sections of the statutes and regulations involved.

(d) A short and plain statement of the matters asserted.

3. Notice of the hearing will be served at least 20 days before the time set for it. A hearing which has previously been continued may be reset on notice of not less than 10 days.

4. Hearings will be held at such place in the State as may be designated by the Board in the notice of hearing.

638.300 Preliminary procedure. (NRS 638.070) The presiding member of the Board shall call the proceeding to order and proceed to take the appearances, and act upon any pending motions or petitions. The parties may then make opening statements.

638.310 Testimony must be under oath. (NRS 638.070) All testimony to be considered by the Board in any hearing, except matters noticed officially or entered by stipulation, must be sworn testimony. Before taking the witness stand, each person shall swear or affirm that the testimony he or she is about to give is the truth, the whole truth, and nothing but the truth.

638.390 Rehearings. (NRS 638.070)

1. Within 15 days of the rendering of a decision or order by the Board, the aggrieved party may apply for a rehearing by filing a written petition for rehearing setting forth the grounds for the petition.
2. The Board will act upon the petition within 30 days after the effective date of the order or decision upon which the rehearing is requested. If no action is taken by the Board within the time specified, the petition shall be deemed denied and the Board's decision is final.
3. The Board, on its own motion, may order a rehearing within 30 days of its decision if mistake, fraud or misconception of facts existed in the forming of its original decision.
4. Rehearings must be conducted in accordance with the procedure at hearings.
5. The filing of a petition for rehearing does not excuse compliance with the order or decision nor suspend the effectiveness of the order unless otherwise ordered by the Board.

638.400 Records of hearings. (NRS 638.070)

1. Upon the filing of a petition for judicial review of a final decision in a contested case, the Board will cause a record to be made in accordance with subsection 7 of NRS 233B.121 and transmit the record to the reviewing court in accordance with subsection 2 of NRS 233B.131.
2. Persons desiring copies of the record may obtain them from the office of the Board upon payment of the fees assessed by the Board.

638.480 Demonstration of competence during practical examination of trainees. (NRS 638.070, 638.117)

1. During the practical examination, a euthanasia technician must demonstrate competence in:

(a) Giving injections by the performance of intravenous injections by insertion of a needle into the vein of an animal.

(b) Handling needles by:

(1) Keeping the cap on the needle until the injection is ready to be made;

(2) Choosing a needle of the appropriate size and length for the animal;

(3) Using a dosage of sodium pentobarbital not less than the minimum recommended by the manufacturer; and

(4) Aspirating the needle for all injections.

(c) The following areas by:

(1) Handling animals with care and regard for human safety. Use of devices for control must be limited to fractious or potentially dangerous animals.

(2) Communicating effectively with a handler.

(3) Lowering an animal that has been injected to a surface after the animal collapses.

2. During the practical examination, a euthanasia technician may demonstrate competence in giving injections by:

(a) The performance of intracardiac injections by insertion of a needle into the heart of an unconscious animal; or

(b) The performance of intraperitoneal injections by insertion of a needle into the injection site of an animal.

638.495 Fees required for licensure; refunding of fees prohibited under certain circumstances. (NRS 638.070, 638.116, 638.127)

1. The Board will not refund any fee collected pursuant to NRS 638.116 or 638.127 if a euthanasia technician is terminated from employment by an agency.

2. The Board will issue a license to a euthanasia technician only after payment of the appropriate fee pursuant to NAC 638.035.

638.732 Restrictions applicable to ordering, dispensing and administering compounded drug product. (NRS 638.070)

1. A licensed veterinarian may order from a pharmacy a compounded drug product for the treatment of an animal receiving veterinary service and may dispense or administer such a compounded drug product subject to the following restrictions:

(a) The licensed veterinarian must order the compounded drug product from a pharmacy pursuant to an order or invoice and, except as otherwise provided in paragraph (d), may not order the compounded drug product pursuant to this section by a prescription.

(b) The quantity of the compounded drug product ordered by the licensed veterinarian and prepared by the pharmacy must not exceed the quantity reasonably needed by the licensed veterinarian to treat his or her patients within the period of time that the compounded drug product will be effective and safe for use.

(c) There is not available a similar, commercially manufactured product that is approved by the Food and Drug Administration or there is a documented shortage of such a product.

(d) The compounded drug product is:

(1) Administered to the animal by a licensed veterinarian, veterinary technician or veterinary technician in training at a veterinary facility in accordance with the person's scope of practice; or

(2) Dispensed to the owner of the animal, or his or her authorized agent, by the licensed veterinarian for the immediate commencement of a necessary therapy and in a quantity of the lesser of:

- (I) The amount sufficient to complete the course of treatment for the animal; or
- (II) A 14-day supply.

↪ If a 14-day supply is insufficient to treat the animal, the licensed veterinarian may issue a prescription to the owner of the animal, or his or her authorized agent, for the quantity that exceeds the 14-day supply and is needed to treat the animal.

(e) The licensed veterinarian may not dispense or otherwise provide the compounded drug product to any person other than the owner of the animal, or his or her authorized agent, for the treatment of the animal.

(f) The compounded drug product must have a label that complies with all applicable laws and regulations.

(g) The licensed veterinarian, veterinary technician or veterinary technician in training must properly label the compounded drug product if it is to be dispensed to the owner of an animal, or his or her authorized agent.

2. As used in this section, “compounded drug product”:

(a) Means a drug that has been substantively changed to address the therapeutic needs of a patient or to comply with an ordered therapy.

(b) Includes, without limitation, a combination of two drugs or a drug which has been altered to change the form of its administration, its strength or other substantive change to the active ingredient of the drug.

(c) Does not include an existing drug or drug product to which a coloring or flavoring agent was added.