

COMMITTEE REPORT

TO: Patrick O'Donnell
Clerk of the Legislature

FROM: Senator Sara Howard
Chair, Health and Human Services Committee

DATE: 11.13.2020

RE: Health and Human Services Committee Report and Recommendations on
Regulated Occupations within Committee Jurisdiction – Physician and
Osteopathic Physician

- I. Occupation Regulated
 - A) Physician and Osteopathic Physician

- II. Name of Occupational Board Responsible for Enforcement
 - A) Per Nebraska Revised Statutes Section [38-161](#), the Board of Medicine and Surgery provides recommendations to the Department of Health and Human Services regarding the issuance or denial of credentials, and provides recommendations to the Department of Health and Human Services regarding rules and regulations to carry out the Uniform Credentialing Act.

- III. Public Purpose and Assumptions Underlying License Creation
 - A) A Physician and/or Surgeon is a person who has earned the degree of M.D. (Doctor of Medicine). They are qualified in the diagnosis or treatment of diseases, ailments, pain, deformity, or any physical or mental condition or injury of human beings.

An Osteopathic Physician and/or Surgeon is a person who has earned the degree of D.O. (Doctor of Osteopathic Medicine). They are qualified in the diagnosis or treatment of diseases, ailments, pain, deformity, or any physical or mental condition or injury of human beings.

Licenses for these professions were created to protect the public health, safety, and welfare.

- IV. Number of Regulated Professionals in Nebraska
 - A) There are 11,755 professionals licensed in Nebraska, including 10,274 Physicians and 1,481 Osteopathic Physicians.

BOARD MEMBERSHIPS AND MEETINGS

- I. Number of Members
 - A) There are eight members of the Board of Medicine and Surgery.

- II. Who Appoints Members of the Board / Is Legislative Approval Required?
 - A) The Board of Health appoints the members of the Board of Medicine and Surgery. Legislative approval is not required.

- III. Term Length
 - A) The length of term for service on the Board of Medicine and Surgery is up to two consecutive five year terms, on a rotating basis.

- IV. Qualifications for Membership of the Board
 - A) The Board of Medicine and Surgery is made up of six professional members and two public members. The professional members shall have held and maintained an active credential and be and have been actively engaged in the practice of his or her profession for a period of five years just preceding his or her appointment and shall maintain such credential and practice while serving as a board member. Two of the six professional members of the board shall be officials or members of the instructional staff of an accredited medical school in this state. One of the six professional members of the board shall be a person who has a license to practice osteopathic medicine and surgery in this state.

- V. The Number of Meetings Required Per Year / Meetings Actually Held
 - A) For fiscal year (FY) 2014-2015: Meetings Required – 1; Meetings Held – 7.
 - B) For FY 2015-2016: Meetings Required – 1; Meetings Held – 6.
 - C) For FY 2016-2017: Meetings Required – 1; Meetings Held – 7.
 - D) For FY 2017-2018: Meetings Required – 1; Meetings Held – 7.
 - E) For FY 2018-2019: Meetings Required – 1; Meetings Held – 9.

- VI. Annual Budget Information for the Previous Five Years
 - A) The Board of Medicine and Surgery is cash-funded from licensure fees. Funds for credentialed occupations may come from interest earned on the Professional and Occupational Credentialing Cash Fund, certification and verification of credentials, administrative fees, reinstatement fees, general funds and federal funds, fees for miscellaneous services, gifts, and grants.
 - B) For FY 2014-2015: \$541,556
 - C) For FY 2015-2016: \$511,670

- D) For FY 2016-2017: \$514,740
- E) For FY 2017-2018: \$43,069
- F) For FY 2018-2019: \$54,249

VII. Statement from Occupational Board on Effectiveness of Regulations

- A) The Chair of the Board of Medicine and Surgery stated “It is extremely important for us to have the occupational oversight provided by the Board of medicine and surgery for clinicians in the state. The board has been effective at improving the safety of medical care and surgical care for patients and citizens of the state as a result of the oversight.”

AUTHORIZATION

I. Statutory Authorization

- A) Statutory authorization for the Physician and Osteopathic Physician occupations may be found in the Nebraska Revised Statutes, sections [38-2001](#) to [38-2062](#), which may be cited as the Medicine and Surgery Practice Act. For text of the Nebraska statutes relating to the Physician and Osteopathic Physician occupations, see Appendix A.

II. Other Authorization

- A) Rules and regulations regarding the licensure of Physicians and Osteopathic Physicians may be found in the Nebraska Administrative Code [Title 172, Chapter 88](#).

CREDENTIALING

I. Number of Licenses, Certifications, or Registrations Issued In Past Five Years

- A) There were 5,473 licenses issued in the past five years, including 4,488 Physician licenses and 985 Osteopathic Physician licenses.

II. Number of Licenses, Certifications, or Registrations Denied in Past Five Years

- A) There were 63 licenses denied in the past five years, including 54 Physician licenses and 9 Osteopathic Physician licenses
- B) Reasons for denial included refusal to cooperate, lack of meeting requirements, and convictions.

III. Number of Licenses, Certifications, or Registrations Revoked in Past Five Years

- A) There were 17 licenses revoked in the past five years, including 13 Physician licenses and 4 Osteopathic Physician licenses.
- B) Reasons for revocation included felony convictions, other state action, unprofessional conduct, practice while impaired, dishonorable conduct,

alcohol addiction, probation violation, failure to keep records, violation of Uniform Controlled Substance Act, history of disciplinary action, failure to file required reports, pattern of incompetence, fraudulent practice, and self-prescribing controlled substances.

IV. Number of Licenses, Certifications, or Registrations Penalized in Past Five Years

- A) There were 164 licenses penalized in the past five years, including 161 Physician licenses, and 3 Osteopathic Physician licenses.
- B) Reasons for penalization included felony convictions, other state action, unprofessional conduct, practice while impaired, dishonorable conduct, alcohol addiction, probation violation, failure to keep records, violation of Uniform Controlled Substance Act, history of disciplinary action, failure to file required reports, pattern of incompetence, fraudulent practice, self-prescribing controlled substances, failure to comply with aftercare, controlled substance dependence, immoral conduct, abuse misconduct or exploitation of a sexual nature, excessive treatment, failure to conform to standards of practice, mild to severe substance use disorder, misrepresentation of material facts, and lack of good character.

V. Comparison of How Other States Regulate This Occupation

- A) All 50 states require licensure for Physicians and Osteopathic Physicians.

VI. What Is The Potential Harm if This Occupation Is No Longer Licensed, Certified, or Regulated?

- A) Physician and Osteopathic Physician occupations were no longer licensed, certified, or regulated, it would be detrimental to public health, safety, and welfare. We would be the only state in the nation with unlicensed doctors. There would be no way to ensure that those prescribing medications, or cutting people open to remove tumors or cysts have the appropriate training, education, and experience to do so. Nebraska would also be in violation of the Interstate Medical Licensure Compact, which would negatively affect practitioner's reciprocity with other states. It would be severely detrimental to the public health, safety, and welfare.

COMMITTEE RECOMMENDATION ON CONTINUATION, MODIFICATION, OR TERMINATION OF OCCUPATIONAL REGULATIONS

Regulated occupations under the purview of the Health and Human Services Committee are unique in that through the Nebraska Regulation of Health Professions Act (Neb. Rev. Stat. Sections 71-6201 to 71-6229), health professions which are not

licensed or regulated, or health professions that wish to change their scope of practice, go through a three-stage credentialing process.

Credentialing review is a three-stage process conducted by the following review bodies in the following order:

- 1) The review of an ad hoc technical review committee appointed by the Director of the Division of Public Health;
- 2) The review of the State Board of Health;
- 3) The review of the Director of the Division of Public Health.

The three review bodies each create their own independent report on each proposal. All reports created by the review process are available to members of the Health and Human Services Committee to assist them during their review of any bills that might arise from credentialing review proposals. These reports include recommendations regarding the level of licensure of the health profession. These reports are advisory to the Legislature, and only the action of the Legislature may create changes in the regulatory status of a profession. These reports represent expert input into possible public health and safety aspects of credentialing review proposals, and the nine-month process is overseen by those with experience in the provision of health-related or medical services.

The licenses, certifications, and registrations overseen by the Board of Medicine and Surgery and the Department of Health and Human Services are intended to protect the health, safety, and welfare of Nebraskans. The current regulation of the Physician and Osteopathic Physician occupations by licensure is appropriate and balanced and does not need modification at this time.

APPENDIX A

STATUTES PERTAINING TO THE MEDICINE AND SURGERY PRACTICE ACT

38-2001. Act, how cited.

Sections 38-2001 to 38-2062 shall be known and may be cited as the Medicine and Surgery Practice Act.

Source: Laws 2007, LB463, § 659; Laws 2009, LB394, § 1; Laws 2011, LB406, § 1; Laws 2018, LB701, § 5; Laws 2019, LB29, § 3; Laws 2020, LB755, § 3.

Effective Date: November 14, 2020

38-2002. Definitions, where found.

For the purposes of the Medicine and Surgery Practice Act and elsewhere in the Uniform Credentialing Act, unless the context otherwise requires, the definitions found in sections 38-2003 to 38-2022 apply.

Source: Laws 1969, c. 560, § 7, p. 2283; Laws 1971, LB 150, § 4; Laws 1989, LB 342, § 17; Laws 1996, LB 1044, § 425; Laws 1999, LB 828, § 83; R.S.1943, (2003), § 71-1,107.01; Laws 2007, LB463, § 660; Laws 2020, LB755, § 4.

Effective Date: November 14, 2020

38-2003. Accredited hospital, defined.

Accredited hospital means a hospital accredited by the department, with the recommendation of the board.

Source: Laws 2007, LB463, § 661.

38-2004. Accredited school or college of medicine, defined.

An accredited school or college of medicine means one approved by the board, and such school or college shall meet and maintain generally minimum standards approved by the board. Such minimum standards shall apply equally to all accredited schools, and any school to be accredited shall permit inspections by the department.

A school or college of osteopathic medicine and surgery fulfilling all such requirements shall not be refused standing as an accredited medical school because it may also specialize in giving instruction according to any special system of healing.

Source: Laws 1927, c. 167, § 103, p. 483; C.S.1929, § 71-1404; Laws 1943, c. 150, § 21, p. 549; R.S.1943, § 71-1,105; Laws 1969, c. 563, § 8, p. 2295; Laws 1989, LB 342, § 16; Laws 1996, LB 1044, § 422; Laws 1999, LB 828, § 81; R.S.1943, (2003), § 71-1,105; Laws 2007, LB463, § 662.

38-2005. Accredited school or college of osteopathic medicine, defined.

An accredited school or college of osteopathic medicine means one approved by the board. An accredited school or college of osteopathic medicine shall meet and maintain

general minimum standards approved by the board. The minimum standards shall apply equally to all such accredited schools and colleges. Any school or college seeking accreditation shall permit inspections by the department.

Nothing in this section shall be construed to prohibit the department, with the recommendation of the board, from accepting accreditation of a school or college of osteopathic medicine by the American Osteopathic Association as evidence of meeting the specified requirements of this section or the equivalent thereof.

Source: Laws 1927, c. 167, § 118, p. 489; C.S.1929, § 71-1704; R.S.1943, § 71-1,140; Laws 1969, c. 565, § 4, p. 2301; Laws 1981, LB 451, § 12; Laws 1989, LB 342, § 25; Laws 1996, LB 1044, § 445; Laws 1999, LB 828, § 106; R.S.1943, (2003), § 71-1,140; Laws 2007, LB463, § 663.

38-2006. Acupuncture, defined.

Acupuncture means the insertion, manipulation, and removal of acupuncture needles and the application of manual, mechanical, thermal, electrical, and electromagnetic treatment to such needles at specific points or meridians on the human body in an effort to promote, maintain, and restore health and for the treatment of disease, based on acupuncture theory. Acupuncture may include the recommendation of therapeutic exercises, dietary guidelines, and nutritional support to promote the effectiveness of the acupuncture treatment. Acupuncture does not include manipulation or mobilization of or adjustment to the spine, extraspinal manipulation, or the practice of medical nutrition therapy.

Source: Laws 2001, LB 270, § 8; Laws 2003, LB 242, § 80; R.S.1943, (2003), § 71-1,344; Laws 2007, LB463, § 664.

38-2007. Acupuncturist, defined.

Acupuncturist means a person engaged in the practice of acupuncture.

Source: Laws 2007, LB463, § 665.

38-2008. Approved program, defined.

Approved program means a program for the education of physician assistants which is accredited by the Accreditation Review Commission on Education for the Physician Assistant or its predecessor or successor agency and which the board formally approves.

Source: Laws 2007, LB463, § 666; Laws 2009, LB195, § 37; Laws 2020, LB755, § 5.
Effective Date: November 14, 2020

38-2010. Board, defined.

Board means the Board of Medicine and Surgery.

Source: Laws 2007, LB463, § 668.

38-2011. Committee, defined.

Committee means the Physician Assistant Committee created in section 38-2056.

Source: Laws 2007, LB463, § 669.

38-2012. Fellowship, defined.

Fellowship means a program of supervised educational training, approved by the board, in a medical specialty or subspecialty at an accredited hospital, an accredited school or college of medicine, or an accredited school or college of osteopathic medicine, that follows the completion of undergraduate medical education.

Source: Laws 2007, LB463, § 670.

38-2013. Graduate medical education or residency, defined.

Graduate medical education or residency means a program of supervised educational training, approved by the board, in a medical specialty at an accredited hospital, an accredited school or college of medicine, or an accredited school or college of osteopathic medicine, that follows the completion of undergraduate medical education.

Source: Laws 2007, LB463, § 671.

38-2014. Physician assistant, defined.

Physician assistant means any person who graduates from an approved program, who has passed a proficiency examination, and who the department, with the recommendation of the board, approves to perform medical services under a collaborative agreement with the supervision of a physician or under a collaborative agreement with the supervision of a podiatrist as provided by section 38-3013.

Source: Laws 1973, LB 101, § 2; R.S.Supp.,1973, § 85-179.05; Laws 1985, LB 132, § 2; Laws 1993, LB 316, § 1; Laws 1996, LB 1044, § 436; Laws 1996, LB 1108, § 8; Laws 1999, LB 828, § 92; Laws 2001, LB 209, § 8; R.S.1943, (2003), § 71-1,107.16; Laws 2007, LB296, § 338; Laws 2007, LB463, § 672; Laws 2009, LB195, § 38; Laws 2020, LB755, § 6.

Effective Date: November 14, 2020

38-2014.01. Physician group, defined.

Physician group means two or more physicians practicing medicine within or employed by the same business entity.

Source: Laws 2020, LB755, § 7.

Effective Date: November 14, 2020

38-2015. Proficiency examination, defined.

Proficiency examination means the Physician Assistant National Certifying Examination administered by the National Commission on Certification of Physician Assistants.

Source: Laws 2007, LB463, § 673; Laws 2009, LB195, § 39.

38-2016. Refresher course, defined.

Refresher course means a planned program of supervised educational training, approved by the board, that provides a review of medical knowledge and skills for the purpose of the enhancement of clinical competency.

Source: Laws 2007, LB463, § 674.

38-2017. Supervising physician, defined.

Supervising physician means a licensed physician who supervises a physician assistant under a collaborative agreement.

Source: Laws 2007, LB463, § 675; Laws 2009, LB195, § 40; Laws 2020, LB755, § 8.
Effective Date: November 14, 2020

38-2018. Supervision, defined.

Supervision means the ready availability of the supervising physician for consultation and collaboration on the activities of the physician assistant.

Source: Laws 2007, LB463, § 676; Laws 2009, LB195, § 41; Laws 2020, LB755, § 9.
Effective Date: November 14, 2020

38-2019. Temporary educational permit, defined.

Temporary educational permit means a permit to practice medicine and surgery, osteopathic medicine and surgery, or any of their allied specialties in graduate medical education, a fellowship, or a refresher course.

Source: Laws 2007, LB463, § 677.

38-2020. Trainee, defined.

Trainee means any person who is currently enrolled in an approved program.

Source: Laws 2007, LB463, § 678.

38-2021. Unprofessional conduct, defined.

Unprofessional conduct means any departure from or failure to conform to the standards of acceptable and prevailing practice of medicine and surgery or the ethics of the profession, regardless of whether a person, patient, or entity is injured, or conduct

that is likely to deceive or defraud the public or is detrimental to the public interest, including, but not limited to:

(1) Performance by a physician of an abortion as defined in subdivision (1) of section 28-326 under circumstances when he or she will not be available for a period of at least forty-eight hours for postoperative care unless such postoperative care is delegated to and accepted by another physician;

(2) Performing an abortion upon a minor without having satisfied the requirements of sections 71-6901 to 71-6911;

(3) The intentional and knowing performance of a partial-birth abortion as defined in subdivision (8) of section 28-326, unless such procedure is necessary to save the life of the mother whose life is endangered by a physical disorder, physical illness, or physical injury, including a life-endangering physical condition caused by or arising from the pregnancy itself; and

(4) Performance by a physician of an abortion in violation of the Pain-Capable Unborn Child Protection Act.

Source: Laws 2007, LB463, § 679; Laws 2010, LB594, § 16; Laws 2010, LB1103, § 12; Laws 2011, LB690, § 1; Laws 2020, LB814, § 10.

Effective Date: November 14, 2020

38-2022. Visiting faculty permit, defined.

Visiting faculty permit means a permit for a physician qualified by virtue of previous medical training and experience to teach students of medicine, to conduct research, or both.

Source: Laws 2007, LB463, § 680.

38-2023. Board; membership; qualifications.

The board shall consist of eight members, including at least two public members. Two of the six professional members of the board shall be officials or members of the instructional staff of an accredited medical school in this state. One of the six professional members of the board shall be a person who has a license to practice osteopathic medicine and surgery in this state. Beginning December 1, 2020, one of the six professional members of the board shall be a physician with experience in practice with physician assistants.

Source: Laws 2007, LB463, § 681; Laws 2020, LB755, § 10.

Effective Date: November 14, 2020

38-2024. Practice of medicine and surgery, defined.

For purposes of the Uniform Credentialing Act, and except as provided in section 38-2025 or as otherwise provided by law, the following classes of persons shall be deemed to be engaged in the practice of medicine and surgery:

- (1) Persons who publicly profess to be physicians or surgeons or publicly profess to assume the duties incident to the practice of medicine, surgery, or any of their branches;
- (2) Persons who prescribe and furnish medicine for some illness, disease, ailment, injury, pain, deformity, or any physical or mental condition, or treat the same by surgery;
- (3) Persons holding themselves out to the public as being qualified in the diagnosis or treatment of diseases, ailments, pain, deformity, or any physical or mental condition, or injuries of human beings;
- (4) Persons who suggest, recommend, or prescribe any form of treatment for the intended palliation, relief, or cure of any physical or mental ailment of any person;
- (5) Persons who maintain an office for the examination or treatment of persons afflicted with ailments, diseases, injuries, pain, deformity, or any physical or mental condition of human beings;
- (6) Persons who attach to their name the title of M.D., surgeon, physician, physician and surgeon, or any word or abbreviation and who indicate that they are engaged in the treatment or diagnosis of ailments, diseases, injuries, pain, deformity, infirmity, or any physical or mental condition of human beings; and
- (7) Persons who are physically located in another state but who, through the use of any medium, including an electronic medium, perform for compensation any service which constitutes the healing arts that would affect the diagnosis or treatment of an individual located in this state.

Source: Laws 1927, c. 167, § 100, p. 482; C.S.1929, § 71-1401; Laws 1943, c. 150, § 18, p. 546; R.S.1943, § 71-1,102; Laws 1969, c. 563, § 1, p. 2291; Laws 1997, LB 452, § 1; Laws 2006, LB 833, § 2; R.S.Supp.,2006, § 71-1,102; Laws 2007, LB463, § 682.

38-2025. Medicine and surgery; practice; persons excepted.

The following classes of persons shall not be construed to be engaged in the unauthorized practice of medicine:

- (1) Persons rendering gratuitous services in cases of emergency;
- (2) Persons administering ordinary household remedies;

(3) The members of any church practicing its religious tenets, except that they shall not prescribe or administer drugs or medicines, perform surgical or physical operations, nor assume the title of or hold themselves out to be physicians, and such members shall not be exempt from the quarantine laws of this state;

(4) Students of medicine who are studying in an accredited school or college of medicine and who gratuitously prescribe for and treat disease under the supervision of a licensed physician;

(5) Physicians who serve in the armed forces of the United States or the United States Public Health Service or who are employed by the United States Department of Veterans Affairs or other federal agencies, if their practice is limited to that service or employment;

(6) Physicians who are licensed in good standing to practice medicine under the laws of another state when incidentally called into this state or contacted via electronic or other medium for consultation with a physician licensed in this state. For purposes of this subdivision, consultation means evaluating the medical data of the patient as provided by the treating physician and rendering a recommendation to such treating physician as to the method of treatment or analysis of the data. The interpretation of a radiological image by a physician who specializes in radiology is not a consultation;

(7) Physicians who are licensed in good standing to practice medicine in another state but who, from such other state, order diagnostic or therapeutic services on an irregular or occasional basis, to be provided to an individual in this state, if such physicians do not maintain and are not furnished for regular use within this state any office or other place for the rendering of professional services or the receipt of calls;

(8) Physicians who are licensed in good standing to practice medicine in another state and who, on an irregular and occasional basis, are granted temporary hospital privileges to practice medicine and surgery at a hospital or other medical facility licensed in this state;

(9) Persons providing or instructing as to use of braces, prosthetic appliances, crutches, contact lenses, and other lenses and devices prescribed by a physician licensed to practice medicine while working under the direction of such physician;

(10) Dentists practicing their profession when licensed and practicing in accordance with the Dentistry Practice Act;

(11) Optometrists practicing their profession when licensed and practicing under and in accordance with the Optometry Practice Act;

(12) Osteopathic physicians practicing their profession if licensed and practicing under and in accordance with sections 38-2029 to 38-2033;

(13) Chiropractors practicing their profession if licensed and practicing under the Chiropractic Practice Act;

(14) Podiatrists practicing their profession when licensed to practice in this state and practicing under and in accordance with the Podiatry Practice Act;

(15) Psychologists practicing their profession when licensed to practice in this state and practicing under and in accordance with the Psychology Interjurisdictional Compact or the Psychology Practice Act;

(16) Advanced practice registered nurses practicing in their clinical specialty areas when licensed under the Advanced Practice Registered Nurse Practice Act and practicing under and in accordance with their respective practice acts;

(17) Surgical first assistants practicing in accordance with the Surgical First Assistant Practice Act;

(18) Persons licensed or certified under the laws of this state to practice a limited field of the healing art, not specifically named in this section, when confining themselves strictly to the field for which they are licensed or certified, not assuming the title of physician, surgeon, or physician and surgeon, and not professing or holding themselves out as qualified to prescribe drugs in any form or to perform operative surgery;

(19) Persons obtaining blood specimens while working under an order of or protocols and procedures approved by a physician, registered nurse, or other independent health care practitioner licensed to practice by the state if the scope of practice of that practitioner permits the practitioner to obtain blood specimens;

(20) Physicians who are licensed in good standing to practice medicine under the laws of another state or jurisdiction who accompany an athletic team or organization into this state for an event from the state or jurisdiction of licensure. This exemption is limited to treatment provided to such athletic team or organization while present in Nebraska;

(21) Persons who are not licensed, certified, or registered under the Uniform Credentialing Act, to whom are assigned tasks by a physician or osteopathic physician licensed under the Medicine and Surgery Practice Act, if such assignment of tasks is in a manner consistent with accepted medical standards and appropriate to the skill and training, on the job or otherwise, of the persons to whom the tasks are assigned. For purposes of this subdivision, assignment of tasks means the routine care, activities, and procedures that (a) are part of the routine functions of such persons who are not so licensed, certified, or registered, (b) reoccur frequently in the care of a patient or group of patients, (c) do not require such persons who are not so licensed, certified, or registered to exercise independent clinical judgment, (d) do not require the performance of any complex task, (e) have results which are predictable and have minimal potential risk, and (f) utilize a standard and unchanging procedure; and

(22) Other trained persons employed by a licensed health care facility or health care service defined in the Health Care Facility Licensure Act or clinical laboratory certified pursuant to the federal Clinical Laboratories Improvement Act of 1967, as amended, or Title XVIII or XIX of the federal Social Security Act to withdraw human blood for scientific or medical purposes.

Any person who has held or applied for a license to practice medicine and surgery in this state, and such license or application has been denied or such license has been refused renewal or disciplined by order of limitation, suspension, or revocation, shall be ineligible for the exceptions described in subdivisions (5) through (8) of this section until such license or application is granted or such license is renewed or reinstated. Every act or practice falling within the practice of medicine and surgery as defined in section 38-2024 and not specially excepted in this section shall constitute the practice of medicine and surgery and may be performed in this state only by those licensed by law to practice medicine in Nebraska.

Source: Laws 1927, c. 167, § 101, p. 482; C.S.1929, § 71-1402; Laws 1943, c. 150, § 19, p. 547; R.S.1943, § 71-1,103; Laws 1961, c. 337, § 12, p. 1056; Laws 1969, c. 563, § 2, p. 2291; Laws 1969, c. 564, § 1, p. 2297; Laws 1971, LB 150, § 1; Laws 1984, LB 724, § 1; Laws 1989, LB 342, § 15; Laws 1991, LB 2, § 11; Laws 1992, LB 291, § 17; Laws 1992, LB 1019, § 40; Laws 1994, LB 1210, § 55; Laws 1996, LB 414, § 3; Laws 1996, LB 1044, § 420; Laws 1997, LB 452, § 2; Laws 1999, LB 366, § 9; Laws 1999, LB 828, § 78; Laws 2000, LB 819, § 86; Laws 2000, LB 1115, § 14; Laws 2002, LB 1062, § 17; Laws 2005, LB 256, § 23; Laws 2006, LB 833, § 3; R.S.Supp.,2006, § 71-1,103; Laws 2007, LB463, § 683; Laws 2016, LB721, § 20; Laws 2018, LB1034, § 30; Laws 2020, LB783, § 1.

Effective Date: November 14, 2020

38-2026. Medicine and surgery; license; qualifications; foreign medical graduates; requirements.

Except as otherwise provided in sections 38-2026.01 and 38-2027, each applicant for a license to practice medicine and surgery shall:

(1)(a) Present proof that he or she is a graduate of an accredited school or college of medicine, (b) if a foreign medical graduate, provide a copy of a permanent certificate issued by the Educational Commission for Foreign Medical Graduates that is currently effective and relates to such applicant or provide such credentials as are necessary to certify that such foreign medical graduate has successfully passed the Visa Qualifying Examination or its successor or equivalent examination required by the United States Department of Health and Human Services and the United States Citizenship and Immigration Services, or (c) if a graduate of a foreign medical school who has successfully completed a program of American medical training designated as the Fifth Pathway and who additionally has successfully passed the Educational Commission for Foreign Medical Graduates examination but has not yet received the permanent

certificate attesting to the same, provide such credentials as certify the same to the Division of Public Health of the Department of Health and Human Services;

(2) Present proof that he or she has served at least one year of graduate medical education approved by the board or, if a foreign medical graduate, present proof that he or she has served at least two years of graduate medical education approved by the board;

(3) Pass a licensing examination approved by the board covering appropriate medical subjects; and

(4) Present proof satisfactory to the department that he or she, within the three years immediately preceding the application for licensure, (a) has been in the active practice of the profession of medicine and surgery in some other state, a territory, the District of Columbia, or Canada for a period of one year, (b) has had at least one year of graduate medical education as described in subdivision (2) of this section, (c) has completed continuing education in medicine and surgery approved by the board, (d) has completed a refresher course in medicine and surgery approved by the board, or (e) has completed the special purposes examination approved by the board.

Source: Laws 1927, c. 167, § 102, p. 483; C.S.1929, § 71-1403; Laws 1943, c. 150, § 20, p. 548; R.S.1943, § 71-1,104; Laws 1963, c. 408, § 6, p. 1312; Laws 1969, c. 563, § 3, p. 2293; Laws 1971, LB 150, § 2; Laws 1975, LB 92, § 3; Laws 1976, LB 877, § 25; Laws 1978, LB 761, § 1; Laws 1985, LB 250, § 13; Laws 1987, LB 390, § 1; Laws 1990, LB 1064, § 13; Laws 1991, LB 400, § 22; Laws 1994, LB 1210, § 56; Laws 1994, LB 1223, § 14; Laws 1996, LB 1044, § 421; Laws 1999, LB 828, § 79; Laws 2002, LB 1062, § 18; Laws 2003, LB 242, § 39; R.S.1943, (2003), § 71-1,104; Laws 2007, LB296, § 332; Laws 2007, LB463, § 684; Laws 2011, LB406, § 2; Laws 2018, LB1034, § 31.

38-2026.01. Reentry license; issuance; qualifications; department; powers; supervision; conversion of license; period valid; renewal.

(1) The department, with the recommendation of the board, may issue a reentry license to a physician who has not actively practiced medicine for the two-year period immediately preceding the filing of an application for a reentry license or who has not otherwise maintained continued competency during such period as determined by the board.

(2) To qualify for a reentry license, the physician shall meet the same requirements for licensure as a regular licensee and submit to evaluations, assessments, and an educational program as required by the board.

(3) If the board conducts an assessment and determines that the applicant requires a period of supervised practice, the department, with the recommendation of the board, may issue a reentry license allowing the applicant to practice medicine under supervision as specified by the board. After satisfactory completion of the period of

supervised practice as determined by the board, the reentry licensee may apply to the department to convert the reentry license to a license issued under section 38-2026.

(4) After an assessment and the completion of any educational program that has been prescribed, if the board determines that the applicant is competent and qualified to practice medicine without supervision, the department, with the recommendation of the board, may convert the reentry license to a license issued under section 38-2026.

(5) A reentry license shall be valid for one year and may be renewed for up to two additional years if approved by the department, with the recommendation of the board.

(6) The issuance of a reentry license shall not constitute a disciplinary action.

Source: Laws 2011, LB406, § 3.

38-2027. Department; waiver of requirements; authorized; conditions; disciplinary action authorized.

(1) The department, with the recommendation of the board, may waive any requirement for more than one year of approved graduate medical education, as set forth in subdivision (2) of section 38-2026, if the applicant has served at least one year of graduate medical education approved by the board and if the following conditions are met:

(a) The applicant meets all other qualifications for a license to practice medicine and surgery;

(b) The applicant submits satisfactory proof that the issuance of a license based on the waiver of the requirement of more than one year of approved graduate medical education will not jeopardize the health, safety, and welfare of the citizens of this state; and

(c) The applicant submits proof that he or she will enter into the practice of medicine in a health profession shortage area designated as such by the Nebraska Rural Health Advisory Commission immediately upon obtaining a license to practice medicine and surgery based upon a waiver of the requirement for more than one year of graduate medical education.

(2) A license issued on the basis of such a waiver shall be subject to the limitation that the licensee continue in practice in the health profession shortage area and such other limitations, if any, deemed appropriate under the circumstances by the director, with the recommendation of the board, which may include, but shall not be limited to, supervision by a medical practitioner, training, education, and scope of practice. After two years of practice under a limited license issued on the basis of a waiver of the requirement of more than one year of graduate medical education, a licensee may apply to the department for removal of the limitations. The director, with the

recommendation of the board, may grant or deny such application or may continue the license with limitations.

(3) In addition to any other grounds for disciplinary action against the license contained in the Uniform Credentialing Act, the department may take disciplinary action against a license granted on the basis of a waiver of the requirement of more than one year of graduate medical education for violation of the limitations on the license.

Source: Laws 2007, LB463, § 685.

38-2028. Reciprocity; requirements; military spouse; temporary license.

(1) An applicant for a license to practice medicine and surgery based on a license in another state or territory of the United States or the District of Columbia shall comply with the requirements of the Interstate Medical Licensure Compact beginning on the effective date of the compact or meet the standards set by the board pursuant to section 38-126, except that an applicant who has not passed one of the licensing examinations specified in the rules and regulations but has been duly licensed to practice medicine and surgery in some other state or territory of the United States of America or in the District of Columbia and obtained that license based upon a state examination, as approved by the board, may be issued a license by the department, with the recommendation of the board, to practice medicine and surgery.

(2) An applicant who is a military spouse may apply for a temporary license as provided in section 38-129.01.

Source: Laws 2007, LB463, § 686; Laws 2017, LB88, § 62.

38-2029. Practice as osteopathic physicians, defined.

(1) For purposes of the Uniform Credentialing Act, the following classes of persons shall be deemed to be engaged in practice as osteopathic physicians:

(a) Persons publicly professing to be osteopathic physicians or publicly professing to assume the duties incident to the practice of osteopathic physicians; and

(b) Persons who are graduates of a school or college of osteopathic medicine and who treat human ailments by that system of the healing art which was advocated and taught by the school or college of osteopathic medicine from which such person graduated at the time of his or her graduation as determined by the department, with the recommendation of the board.

(2) No license issued to osteopathic physicians under the Medicine and Surgery Practice Act shall authorize the person so licensed to perform surgical procedures except those usually performed by general practitioners, as determined by the department, with the recommendation of the board.

(3) Nothing in this section shall be construed to prohibit an osteopathic physician licensed in accordance with the act from serving as an assistant in surgery more complex than that usually performed by general practitioners, as determined by the department, with the recommendation of the board, when such surgery is performed by an osteopathic physician licensed pursuant to section 38-2032 or by an osteopathic physician or doctor of medicine licensed pursuant to section 38-2026. In no event shall this section or section 38-2032 be construed as authorizing any physician to engage in any procedure which he or she is not qualified by training to perform according to the standards prevailing in the State of Nebraska at the time.

(4) Persons who are licensed to practice as osteopathic physicians who have demonstrated to the department, with the recommendation of the board, that they have acquired adequate training and knowledge for such purpose and have been so authorized by the department, with the recommendation of the board, may prescribe and administer drugs and medicines.

Source: Laws 1927, c. 167, § 115, p. 488; C.S.1929, § 71-1701; R.S.1943, § 71-1,137; Laws 1969, c. 565, § 1, p. 2299; Laws 1972, LB 1498, § 2; Laws 1981, LB 451, § 9; Laws 1989, LB 342, § 21; Laws 1996, LB 1044, § 442; Laws 1999, LB 828, § 103; R.S.1943, (2003), § 71-1,137; Laws 2007, LB463, § 687.

38-2030. Practice as osteopathic physicians; persons excepted.

For purposes of the Uniform Credentialing Act, the following classes of persons shall not be construed as engaged in practice as osteopathic physicians:

(1) Licensed physicians and surgeons, podiatrists, nurses, and dentists who are exclusively engaged in the practice of their respective professions;

(2) Physicians and surgeons who serve in the armed forces of the United States or the United States Public Health Service or who are employed by the United States Department of Veterans Affairs or other federal agencies, if their practice is limited to that service or employment; and

(3) Osteopathic physicians licensed in another state when incidentally called into this state in consultation with a licensed physician or an osteopathic physician licensed in this state.

Source: Laws 1927, c. 167, § 116, p. 488; C.S.1929, § 71-1702; R.S.1943, § 71-1,138; Laws 1961, c. 337, § 13, p. 1057; Laws 1969, c. 565, § 2, p. 2300; Laws 1989, LB 342, § 22; R.S.1943, (2003), § 71-1,138; Laws 2007, LB463, § 688.

38-2031. Osteopathic physician; license; requirements.

Every applicant for a license to practice as an osteopathic physician shall (1) present proof of having completed a four-year course in an accredited high school or its equivalent, (2) present proof of having graduated from an accredited school or college

of osteopathic medicine, and (3) pass an examination, as approved by the board, in the science of osteopathy and the practice of the same.

Source: Laws 1927, c. 167, § 117, p. 489; C.S.1929, § 71-1703; R.S.1943, § 71-1,139; Laws 1981, LB 451, § 10; Laws 1989, LB 342, § 23; Laws 1996, LB 1044, § 443; Laws 1997, LB 752, § 159; Laws 1999, LB 828, § 104; R.S.1943, (2003), § 71-1,139; Laws 2007, LB463, § 689.

38-2032. Osteopathic physician; license; additional requirements.

(1) If a person (a) has graduated from an accredited school or college of osteopathic medicine since January 1, 1963, (b) meets all statutory requirements for licensure as an osteopathic physician, (c) has served one year of internship or its equivalent at an institution approved for such training by the board, (d) after his or her internship, has taken and passed the examination provided in section 38-2026, and (e) presents proof satisfactory to the department, with the recommendation of the board, that he or she, within the three years immediately preceding the application for licensure, (i) has been in the active practice of the profession of osteopathic medicine and surgery in some other state, a territory, the District of Columbia, or Canada for a period of one year, (ii) has had one year of graduate medical education as described in subdivision (1)(c) of this section, (iii) has completed continuing education in medicine and surgery or osteopathic medicine and surgery approved by the board, (iv) has completed a refresher course in medicine and surgery or osteopathic medicine and surgery approved by the board, or (v) has completed the special purposes examination approved by the board, such person, upon making application therefor, shall receive a license as a Doctor of Osteopathic Medicine and Surgery which shall qualify such person to practice osteopathic medicine and surgery.

(2) With respect to persons who have graduated from an accredited school or college of osteopathic medicine prior to January 1, 1963, the department, with the recommendation of the board, may issue a license to practice osteopathic medicine and surgery to any such graduate who meets all the requirements for issuance of such license except graduation from an accredited school or college of osteopathic medicine after January 1, 1963.

Source: Laws 1963, c. 408, § 1, p. 1310; Laws 1969, c. 565, § 3, p. 2301; Laws 1981, LB 451, § 11; Laws 1989, LB 342, § 24; Laws 1996, LB 1044, § 444; Laws 1999, LB 828, § 105; Laws 2002, LB 1062, § 33; R.S.1943, (2003), § 71-1,139.01; Laws 2007, LB463, § 690.

38-2033. Osteopathic physician; license; scope.

(1) With respect to licenses issued pursuant to sections 38-2031 and 38-2032 and any renewals thereof, the department shall designate the extent of such practice as follows:

(a) License to practice as an osteopathic physician; or

(b) License to practice osteopathic medicine and surgery.

(2) Every license issued under sections 38-2031 and 38-2032 shall confer upon the holder thereof the right to practice osteopathic medicine and surgery as taught in the schools or colleges of osteopathic medicine recognized by the American Osteopathic Association in the manner and to the extent provided by such license.

Source: Laws 1927, c. 167, § 119, p. 490; C.S.1929, § 71-1705; R.S.1943, § 71-1,141; Laws 1969, c. 565, § 5, p. 2302; Laws 1989, LB 342, § 26; Laws 1996, LB 1044, § 446; R.S.1943, (2003), § 71-1,141; Laws 2007, LB296, § 343; Laws 2007, LB463, § 691.

38-2034. Applicant; reciprocity; requirements; military spouse; temporary license.

(1) An applicant for a license to practice osteopathic medicine and surgery based on a license in another state or territory of the United States or the District of Columbia shall comply with the requirements of the Interstate Medical Licensure Compact beginning on the effective date of the compact or meet the standards set by the board pursuant to section 38-126, except that an applicant who has not passed one of the licensing examinations specified in the rules and regulations but has been duly licensed to practice osteopathic medicine and surgery in some other state or territory of the United States of America or in the District of Columbia and obtained that license based upon a state examination, as approved by the board, may be issued a license by the department, upon the recommendation of the board, to practice osteopathic medicine and surgery.

(2) An applicant who is a military spouse may apply for a temporary license as provided in section 38-129.01.

Source: Laws 2007, LB463, § 692; Laws 2017, LB88, § 63.

38-2035. Applicant; examination; retaking examination.

Applicants for licensure in medicine and surgery and osteopathic medicine and surgery shall pass the licensing examination. An applicant who fails to pass any part of the licensing examination within four attempts shall complete one additional year of postgraduate medical education at an accredited school or college of medicine or osteopathic medicine. All parts of the licensing examination shall be successfully completed within ten years. An applicant who fails to successfully complete the licensing examination within the time allowed shall retake that part of the examination which was not completed within the time allowed.

Source: Laws 2007, LB463, § 693.

38-2036. Physician locum tenens; issuance authorized; conditions; term.

A physician locum tenens may be issued by the department, with the recommendation of the board, to an individual who holds an active license to practice medicine and surgery or osteopathic medicine and surgery in another state when circumstances indicate a need for the issuance of a physician locum tenens in the State of Nebraska. A physician locum tenens may be issued for a period not to exceed ninety days in any twelve-month period.

Source: Laws 2007, LB463, § 694.

38-2037. Additional grounds for disciplinary action.

In addition to the grounds for disciplinary action found in sections 38-178 and 38-179, a license to practice medicine and surgery or osteopathic medicine and surgery or a license to practice as a physician assistant may be denied, refused renewal, limited, revoked, or suspended or have other disciplinary measures taken against it in accordance with section 38-196 when the applicant or licensee fails to comply with the provisions of section 71-603.01, 71-604, 71-605, or 71-606 relating to the signing of birth and death certificates.

Source: Laws 2007, LB463, § 695; Laws 2009, LB195, § 42.

38-2038. Temporary educational or visiting faculty permit; use.

The holder of a temporary educational permit or of a visiting faculty permit shall be entitled to practice medicine and surgery and any of its allied specialties, including prescribing medicine and controlled substances, while serving in graduate medical education, a fellowship, or a refresher course in the State of Nebraska, but neither the holder of a temporary educational permit nor the holder of a visiting faculty permit shall be qualified to engage in the practice of medicine and surgery or any of its allied specialties within the State of Nebraska and outside of the assigned graduate medical education, fellowship, refresher course, teaching program, or research program.

Source: Laws 1969, c. 560, § 9, p. 2283; Laws 1971, LB 150, § 6; R.S.1943, (2003), § 71-1,107.03; Laws 2007, LB463, § 696.

38-2039. Temporary educational permit; application; department; duties.

Before granting any temporary educational permit, the department, with the recommendation of the board, shall ascertain that an authorized provider of graduate medical education, a fellowship, or a refresher course has requested the issuance of a temporary educational permit for an applicant to participate in its graduate medical education, fellowship, or refresher course for the period involved.

Source: Laws 1969, c. 560, § 13, p. 2284; Laws 1971, LB 150, § 10; Laws 1996, LB 1044, § 430; R.S.1943, (2003), § 71-1,107.07; Laws 2007, LB296, § 336; Laws 2007, LB463, § 697.

38-2040. Visiting faculty permit; application; department; duties.

Before a visiting faculty permit is issued, the department, with the recommendation of the board, shall determine that an accredited school or college of medicine in the State of Nebraska has requested issuance of a visiting faculty permit for the individual involved to serve as a member of the faculty of such school or college of medicine. Any application for issuing a visiting faculty permit shall outline the faculty duties to be performed pursuant to the permit.

Source: Laws 1969, c. 560, § 14, p. 2284; Laws 1971, LB 150, § 11; Laws 1996, LB 1044, § 431; R.S.1943, (2003), § 71-1,107.08; Laws 2007, LB296, § 337; Laws 2007, LB463, § 698.

38-2041. Temporary educational or visiting faculty permits; recommend, when.

The recommendation of the board for the issuance of any temporary educational permits or any visiting faculty permits shall be made at regular meetings of such board, but the chairperson or one other member of the board shall have the power to recommend the issuance of such permits between the meetings of the board.

Source: Laws 1969, c. 560, § 15, p. 2285; Laws 1971, LB 150, § 12; Laws 1999, LB 828, § 87; R.S.1943, (2003), § 71-1,107.09; Laws 2007, LB463, § 699.

38-2042. Temporary educational or visiting faculty permit; duration; renewal.

The duration of any temporary educational or visiting faculty permit shall be determined by the department but in no case shall it be in excess of one year. The permit may be renewed annually as long as the holder of a temporary educational permit is still enrolled and participating in the program of supervised educational training or as long as the holder of a visiting faculty permit is still teaching students of medicine or conducting research.

Source: Laws 1969, c. 560, § 12, p. 2284; Laws 1971, LB 150, § 9; Laws 1989, LB 342, § 18; Laws 1996, LB 1044, § 429; R.S.1943, (2003), § 71-1,107.06; Laws 2007, LB296, § 335; Laws 2007, LB463, § 700.

38-2043. Temporary educational or visiting faculty permit; disciplinary action; grounds.

Any temporary educational or visiting faculty permit may be suspended, limited, or revoked by the department, with the recommendation of the board, at any time upon a finding that the reasons for issuing such permit no longer exist or that the person to whom such permit has been issued is no longer qualified to hold such permit.

Source: Laws 1969, c. 560, § 17, p. 2285; Laws 1971, LB 150, § 14; Laws 1996, LB 1044, § 433; Laws 1999, LB 828, § 89; R.S.1943, (2003), § 71-1,107.11; Laws 2007, LB463, § 701.

38-2044. Temporary educational permit; to whom issued; qualifications.

A temporary educational permit may be issued to graduates of foreign schools or colleges of medicine or to individuals if the applicant, in addition to meeting the other requirements for the issuance of such permit, presents to the department a copy of a permanent certificate of the Educational Commission on Foreign Medical Graduates currently effective and relating to such applicant or, in lieu thereof, such credentials as are necessary to certify to successful passage of the Visa Qualifying Examination, or its successor or equivalent examination, required by the United States Department of Health and Human Services and the United States Citizenship and Immigration Services or, if a graduate of a foreign medical school who has successfully completed a program of American medical training designated as the Fifth Pathway and who additionally has successfully passed the Educational Commission on Foreign Medical Graduates examination but has not yet received a permanent certificate attesting to the same, and provides such credentials as are necessary to certify the same to the department, at such time as the department, with the recommendation of the board, determines, and, if so directed by the department, passes an examination approved by the board to measure his or her clinical competence to proceed to advanced training before advancing beyond the initial phase of the training program, and if such examination is required, pays the required fee.

Source: Laws 1969, c. 560, § 19, p. 2286; Laws 1971, LB 150, § 15; Laws 1974, LB 811, § 10; Laws 1978, LB 761, § 2; Laws 1991, LB 2, § 12; Laws 1996, LB 1044, § 434; Laws 1999, LB 828, § 90; Laws 2003, LB 242, § 41; R.S.1943, (2003), § 71-1,107.13; Laws 2007, LB463, § 702.

38-2045. Visiting faculty permit; issuance; conditions.

A visiting faculty permit may be issued to graduates of foreign schools or colleges of medicine or to individuals if an accredited college or school of medicine in the State of Nebraska has requested that such permit be issued. It shall not be necessary for such applicant to provide a certificate of the Educational Commission on Foreign Medical Graduates as required in the case of temporary educational permits. If directed by the department an applicant for a visiting faculty permit may be required to pass an examination approved by the board to measure his or her clinical competence to practice medicine and if such examination is required the applicant shall pay the required fee.

Source: Laws 1971, LB 150, § 16; Laws 1974, LB 811, § 11; Laws 1996, LB 1044, § 435; Laws 1999, LB 828, § 91; Laws 2003, LB 242, § 42; R.S.1943, (2003), § 71-1,107.14; Laws 2007, LB463, § 703.

38-2046. Physician assistants; legislative findings.

The Legislature finds that:

(1) In its concern with the geographic maldistribution of health care services in Nebraska it is essential to develop additional health personnel; and

(2) It is essential to encourage the more effective utilization of the skills of physicians and podiatrists by enabling them to delegate health care tasks to qualified physician assistants when such delegation is consistent with the patient's health and welfare.

It is the intent of the Legislature to encourage the utilization of physician assistants.

Source: Laws 1973, LB 101, § 1; R.S.Supp.,1973, § 85-179.04; Laws 1985, LB 132, § 1; R.S.1943, (2003), § 71-1,107.15; Laws 2007, LB463, § 704; Laws 2020, LB755, § 11.
Effective Date: November 14, 2020

38-2047. Physician assistants; services performed; supervision requirements.

(1) A physician assistant may perform medical services that (a) are delegated by and provided under the supervision of a licensed physician who meets the requirements of section 38-2050, (b) are appropriate to the level of education, experience, and training of the physician assistant, (c)(i) form a component of the supervising physician's scope of practice or (ii) form a component of the scope of practice of a physician who meets the requirements of section 38-2050 working in the same physician group as the physician assistant if delegated by and provided under the supervision of and collaboration with such physician, (d) are medical services for which the physician assistant has been prepared by education, experience, and training and that the physician assistant is competent to perform, and (e) are not otherwise prohibited by law.

(2) A physician assistant shall have at least one supervising physician for each employer. If the employer is a multispecialty practice, the physician assistant shall have a supervising physician for each specialty practice area in which the physician assistant performs medical services.

(3) Each physician assistant and his or her supervising physician shall be responsible to ensure that (a) the scope of practice of the physician assistant is identified, (b) the delegation of medical tasks is appropriate to the level of education, experience, and training of the physician assistant, (c) the relationship of and access to the supervising physician is defined, and (d) a process for evaluation of the performance of the physician assistant is established.

(4) A physician assistant may pronounce death and may complete and sign death certificates and any other forms if such acts are within the scope of practice of the physician assistant.

(5) A physician assistant may practice under the supervision of a podiatrist as provided in section 38-3013.

Source: Laws 1973, LB 101, § 3; R.S.Supp.,1973, § 85-179.06; Laws 1985, LB 132, § 3; Laws 1993, LB 316, § 2; Laws 1996, LB 1108, § 9; R.S.1943, (2003), § 71-1,107.17; Laws 2007, LB463, § 705; Laws 2009, LB195, § 43; Laws 2020, LB755, § 12.

Effective Date: November 14, 2020

38-2048. Physician assistants; trainee; services performed.

Notwithstanding any other provision of law, a trainee may perform medical services when he or she renders such services within the scope of an approved program.

Source: Laws 1973, LB 101, § 4; R.S.Supp.,1973, § 85-179.07; Laws 1985, LB 132, § 4; R.S.1943, (2003), § 71-1,107.18; Laws 2007, LB463, § 706.

38-2049. Physician assistants; licenses; temporary licenses; issuance; military spouse; temporary license.

(1) The department, with the recommendation of the board, shall issue licenses to persons who are graduates of an approved program and have passed a proficiency examination.

(2) The department, with the recommendation of the board, shall issue temporary licenses under this subsection to persons who have successfully completed an approved program but who have not yet passed a proficiency examination. Any temporary license issued pursuant to this subsection shall be issued for a period not to exceed one year and under such conditions as determined by the department, with the recommendation of the board. The temporary license issued under this subsection may be extended by the department, with the recommendation of the board.

(3) Physician assistants approved by the board prior to April 16, 1985, shall not be required to complete the proficiency examination.

(4) An applicant who is a military spouse applying for a license to practice as a physician assistant may apply for a temporary license as provided in section 38-129.01.

Source: Laws 1973, LB 101, § 5; R.S.Supp.,1973, § 85-179.08; Laws 1985, LB 132, § 5; Laws 1996, LB 1108, § 10; R.S.1943, (2003), § 71-1,107.19; Laws 2007, LB463, § 707; Laws 2009, LB195, § 44; Laws 2017, LB88, § 64.

38-2050. Physician assistants; supervision; supervising physician; requirements; collaborative agreement.

(1) To be a supervising physician, a person shall:

(a) Be licensed to practice medicine and surgery under the Uniform Credentialing Act;

(b) Have no restriction imposed by the board on his or her ability to supervise or collaborate with a physician assistant; and

(c) Be a party to a collaborative agreement with the physician assistant.

(2) The supervising physician shall keep the collaborative agreement on file at his or her primary practice site, shall keep a copy of the collaborative agreement on file at each practice site where the physician assistant provides medical services, and shall make the collaborative agreement available to the board and the department upon request.

(3) Supervision of a physician assistant by a supervising physician shall be continuous but shall not require the physical presence of the supervising physician at the time and place that the services are rendered. A physician assistant may render services in a setting that is geographically remote from the supervising physician.

(4) A supervising physician may supervise no more than four physician assistants at any one time. The board may consider an application for waiver of this limit and may waive the limit upon a showing that the supervising physician meets the minimum requirements for the waiver. The department may adopt and promulgate rules and regulations establishing minimum requirements for such waivers.

Source: Laws 1973, LB 101, § 6; R.S.Supp.,1973, § 85-179.09; Laws 1985, LB 132, § 6; Laws 1993, LB 316, § 3; R.S.1943, (2003), § 71-1,107.20; Laws 2007, LB463, § 708; Laws 2009, LB195, § 45; Laws 2020, LB755, § 13.

Effective Date: November 14, 2020

38-2052. Physician assistants; misrepresentation; penalty.

Any person who has not been licensed by the department, with the recommendation of the board, and who holds himself or herself out as a physician assistant, or who uses any other term to indicate or imply that he or she is a physician assistant, shall be guilty of a Class IV felony.

Source: Laws 1973, LB 101, § 7; R.S.Supp.,1973, § 85-179.10; Laws 1977, LB 39, § 319; Laws 1985, LB 132, § 7; R.S.1943, (2003), § 71-1,107.21; Laws 2007, LB463, § 710.

38-2053. Physician assistants; negligent acts; liability.

Any physician or physician groups utilizing physician assistants shall be liable for any negligent acts or omissions of physician assistants while acting under their supervision.

Source: Laws 1973, LB 101, § 14; R.S.Supp.,1973, § 85-179.17; Laws 1985, LB 132, § 13; R.S.1943, (2003), § 71-1,107.28; Laws 2007, LB463, § 711; Laws 2020, LB755, § 14.

Effective Date: November 14, 2020

38-2054. Physician assistants; licensed; not engaged in unauthorized practice of medicine.

Any physician assistant who is licensed and who renders services under the supervision of a licensed physician as provided by the Medicine and Surgery Practice Act shall not be construed to be engaged in the unauthorized practice of medicine.

Source: Laws 1973, LB 101, § 15; R.S.Supp.,1973, § 85-179.18; Laws 1985, LB 132, § 14; Laws 1996, LB 1108, § 13; R.S.1943, (2003), § 71-1,107.29; Laws 2007, LB463, § 712; Laws 2020, LB755, § 15.

Effective Date: November 14, 2020

38-2055. Physician assistants; prescribe drugs and devices; restrictions; therapeutic regimen; powers.

(1) A physician assistant, under a collaborative agreement with a supervising physician, may prescribe drugs and devices.

(2) All such prescriptions and prescription container labels shall bear the name of the physician assistant. A physician assistant who prescribes controlled substances listed in Schedule II, III, IV, or V of section 28-405 shall obtain a federal Drug Enforcement Administration registration number. A physician assistant may dispense drug samples to patients and may request, receive, or sign for drug samples.

(3) A physician assistant, under a collaborative agreement with a supervising physician, may plan and initiate a therapeutic regimen, which includes ordering and prescribing nonpharmacological interventions, including, but not limited to, durable medical equipment, nutrition, blood and blood products, and diagnostic support services, such as home health care, hospice, physical therapy, and occupational therapy.

Source: Laws 1985, LB 132, § 15; Laws 1992, LB 1019, § 41; Laws 1999, LB 379, § 4; Laws 1999, LB 828, § 94; Laws 2005, LB 175, § 1; R.S.Supp.,2006, § 71-1,107.30; Laws 2007, LB463, § 713; Laws 2009, LB195, § 46; Laws 2020, LB755, § 16.

Effective Date: November 14, 2020

38-2056. Physician Assistant Committee; created; membership; powers and duties; per diem; expenses.

(1) There is hereby created the Physician Assistant Committee which shall review and make recommendations to the board regarding all matters relating to physician assistants that come before the board. Such matters shall include, but not be limited to, (a) applications for licensure, (b) physician assistant education, (c) scope of practice, (d) proceedings arising pursuant to sections 38-178 and 38-179, (e) physician assistant licensure requirements, and (f) continuing competency. The committee shall be directly responsible to the board.

(2) The committee shall be appointed by the State Board of Health. The committee shall be composed of two physician assistants, one supervising physician, one member of the Board of Medicine and Surgery who shall be a nonvoting member of the committee, and one public member. The chairperson of the committee shall be elected by a majority vote of the committee members.

(3) At the expiration of the four-year terms of the members serving on December 1, 2008, appointments shall be for five-year terms. Members shall serve no more than two

consecutive full five-year terms. Reappointments shall be made by the State Board of Health.

(4) The committee shall meet on a regular basis and committee members shall, in addition to necessary traveling and lodging expenses, receive a per diem for each day actually engaged in the discharge of his or her duties, including compensation for the time spent in traveling to and from the place of conducting business. Traveling and lodging expenses shall be reimbursed on the same basis as provided in sections 81-1174 to 81-1177. The compensation shall not exceed fifty dollars per day and shall be determined by the committee with the approval of the department.

Source: Laws 1973, LB 101, § 11; R.S.Supp.,1973, § 85-179.14; Laws 1985, LB 132, § 10; Laws 1996, LB 1108, § 11; Laws 1999, LB 828, § 93; Laws 2002, LB 1021, § 18; R.S.1943, (2003), § 71-1,107.25; Laws 2007, LB463, § 714; Laws 2020, LB755, § 17.
Effective Date: November 14, 2020

38-2057. Acupuncture; exemptions.

The provisions of the Medicine and Surgery Practice Act relating to acupuncture do not apply to:

- (1) Any other health care practitioner credentialed under the Uniform Credentialing Act practicing within the scope of his or her profession;
- (2) A student practicing acupuncture under the supervision of a person licensed to practice acupuncture under the Uniform Credentialing Act as part of a course of study approved by the department; or
- (3) The practice of acupuncture by any person licensed or certified to practice acupuncture in any other jurisdiction when practicing in an educational seminar sponsored by a state-approved acupuncture or professional organization if the practice is supervised directly by a person licensed to practice acupuncture under the Uniform Credentialing Act.

Source: Laws 2001, LB 270, § 9; Laws 2003, LB 242, § 81; R.S.1943, (2003), § 71-1,345; Laws 2007, LB463, § 715.

38-2058. Acupuncture; license required; standard of care.

It is unlawful to practice acupuncture on a person in this state unless the acupuncturist is licensed to practice acupuncture under the Uniform Credentialing Act. An acupuncturist licensed under the Uniform Credentialing Act shall provide the same standard of care to patients as that provided by a person licensed under the Uniform Credentialing Act to practice medicine and surgery, osteopathy, or osteopathic medicine and surgery. An acupuncturist licensed under the Uniform Credentialing Act shall refer a patient to an appropriate practitioner when the problem of the patient is beyond the training, experience, or competence of the acupuncturist.

Source: Laws 2001, LB 270, § 10; R.S.1943, (2003), § 71-1,346; Laws 2007, LB463, § 716; Laws 2017, LB19, § 1.

38-2059. Acupuncture; consent required.

The practice of acupuncture shall not be performed upon any person except with the voluntary and informed consent of such person. Information provided in connection with obtaining such informed consent shall include, but not be limited to, the following:

- (1) The distinctions and differences between the practice of acupuncture and the practice of medicine;
- (2) The disclosure that an acupuncturist is not licensed to practice medicine or to make a medical diagnosis of the person's disease or condition and that a physician should be consulted for such medical diagnosis;
- (3) The nature and the purpose of the acupuncture treatment; and
- (4) Any medical or other risks associated with such treatment.

Source: Laws 2001, LB 270, § 11; R.S.1943, (2003), § 71-1,347; Laws 2007, LB463, § 717.

38-2060. Acupuncture; license requirements.

At the time of application for an initial license to practice acupuncture, the applicant shall present to the department proof that he or she:

- (1) Has graduated from, after having successfully completed the acupuncture curriculum requirements of, a formal, full-time acupuncture program at a university, college, or school of acupuncture approved by the board which includes at least one thousand seven hundred twenty-five hours of entry-level acupuncture education consisting of a minimum of one thousand didactic and five hundred clinical hours;
- (2) Has successfully passed an acupuncture examination approved by the board which shall include a comprehensive written examination in acupuncture theory, diagnosis and treatment technique, and point location; and
- (3) Has successfully completed a clean-needle technique course approved by the board.

Source: Laws 2001, LB 270, § 12; R.S.1943, (2003), § 71-1,348; Laws 2007, LB463, § 718.

38-2061. Fees.

The department shall establish and collect fees for credentialing under the Medicine and Surgery Practice Act as provided in sections 38-151 to 38-157.

Source: Laws 2007, LB463, § 719.

38-2062. Anatomic pathology service; unprofessional conduct.

(1) It shall be unprofessional conduct for any physician who orders but does not supervise or perform a component of an anatomic pathology service to fail to disclose in any bill for such service presented to a patient, entity, or person:

(a) The name and address of the physician or laboratory that provided the anatomic service; and

(b) The actual amount paid or to be paid for each anatomic pathology service provided to the patient by the physician or laboratory that performed the service.

(2) For purposes of this section, anatomic pathology service means:

(a) Blood-banking services performed by pathologists;

(b) Cytopathology, which means the microscopic examination of cells from the following: Fluids; aspirates; washings; brushings; or smears, including the Pap test examination performed by a physician or under the supervision of a physician;

(c) Hematology, which means the microscopic evaluation of bone marrow aspirates and biopsies performed by a physician or under the supervision of a physician and peripheral blood smears when the attending or treating physician or technologist requests that a blood smear be reviewed by the pathologist;

(d) Histopathology or surgical pathology, which means the gross and microscopic examination and histologic processing of organ tissue performed by a physician or under the supervision of a physician; and

(e) Subcellular pathology and molecular pathology.

(3) For purposes of this section, anatomic pathology service does not include the initial collection or packaging of the specimen for transport.

Source: Laws 2009, LB394, § 2.