

**PROPOSED REGULATION OF THE
BOARD OF MEDICAL EXAMINERS**

LCB File No. R028-22

March 29, 2022

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

AUTHORITY: §§ 1, 2 and 6, NRS 630.130; § 3, NRS 630.130, 630.275, 630.2751, as amended by section 20 of Senate Bill No. 184, chapter 171, Statutes of Nevada 2021, at page 760 and NRS 630.2752, as amended by section 21 of Senate Bill No. 184, chapter 171, Statutes of Nevada 2021, at page 761; §§ 4 and 8, NRS 630.130 and 630.269; § 5, NRS 630.130 and 630.160; § 7, NRS 630.130 and 630.275.

A REGULATION relating to medical professionals; requiring that a physician, physician assistant, perfusionist or practitioner of respiratory care provide for the presence of a patient attendant during certain examinations and procedures; requiring an applicant for licensure by endorsement as a physician assistant to hold certain certification; adopting a code of ethics for perfusionists; updating certain references; revising certain standards of practice for physicians, physician assistants, perfusionists and practitioners of respiratory care; providing for the automatic suspension of the license of a perfusionist under certain circumstances; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law authorizes the Board of Medical Examiners to establish by regulation standards of licensure of physicians, physician assistants, perfusionists and practitioners of respiratory care and adopt such regulations as are necessary or desirable to enable the Board to carry out its duties. (NRS 630.130) **Section 2** of this regulation requires, with certain exceptions, a licensee to ensure a patient attendant is present: (1) during certain examinations of or procedures involving the genitalia, rectum or breast of a patient; (2) upon the request of the patient; or (3) if the licensee desires the presence of the patient attendant. **Section 2** additionally prescribes procedures relating to the attendance of an examination or procedure by a patient attendant. **Section 6** of this regulation includes the provisions of **section 2** within the standards of practice established by the Board.

Existing law provides for the expedited licensure by endorsement of physician assistants who are licensed in other jurisdictions and meet certain other requirements. (NRS 630.2751, as amended by section 20 of Senate Bill No. 184, chapter 171, Statutes of Nevada 2021, at page 760, NRS 630.2752, as amended by section 21 of Senate Bill No. 184, chapter 171, Statutes of Nevada 2021, at page 761) **Section 3** of this regulation requires an application for expedited licensure by endorsement as a physician assistant to include proof that the applicant is currently certified by the National Commission on Certification of Physician Assistants.

Existing law requires the Board to adopt a code of ethics for perfusionists. (NRS 630.269) **Section 4** of this regulation adopts such a code. **Section 8** of this regulation: (1) makes a conforming change by removing existing provisions that partially duplicate that code of ethics; (2) authorizes discipline against a perfusionist who violates that code of ethics; and (3) provides for the automatic suspension of the license of a perfusionist who ceases to be certified by the American Board of Cardiovascular Perfusion, or its successor organization.

Section 5 of this regulation updates references to certain statutory subdivisions to conform with changes made during the 2019 Legislative Session.

Existing law imposes requirements on providers of health care concerning records of birth and death and health care records and certain other general requirements governing the healing arts. (Chapters 440 and 629 of NRS) Existing law further authorizes the Board to discipline a licensed physician, physician assistant, perfusionist or practitioner of respiratory care who violates regulations adopted by the Board. (NRS 630.301) **Section 7** of this regulation requires such a licensee to comply with state law governing records of birth and death, health records and the healing arts, thereby authorizing the Board to impose discipline against a licensee who violates those laws.

Existing law authorizes an advanced practice registered nurse acting independently to: (1) engage in selected medical diagnosis and treatment; (2) subject to certain limitations, prescribe controlled substances, poisons, dangerous drugs and devices; and (3) perform certain other tasks. (NRS 632.237) Existing regulations authorize a physician to collaborate with an advanced practice registered nurse and prescribe certain requirements governing such collaboration. (NAC 630.490) **Section 7** removes the prohibition against a physician failing to provide adequate supervision of an advanced practice registered nurse. Instead, **section 7** prohibits a physician from failing to adequately collaborate with an advanced practice registered nurse with whom the physician is collaborating.

Section 1. Chapter 630 of NAC is hereby amended by adding thereto the provisions set forth as sections 2, 3 and 4 of this regulation.

Sec. 2. 1. *Except as otherwise provided in subsection 6, a licensee shall ensure that a patient attendant is present when:*

(a) The licensee is performing a visual or physical examination of, or a procedure involving, the genitalia, rectum or breast of the patient;

(b) The licensee is performing a procedure involving the placement of any object or matter, including, but not limited to, a finger, swab, medical equipment or medication into the vagina, penis, urethra or rectum of the patient; or

(c) The patient or, if the patient lacks the capacity to consent to medical care, the representative of the patient requests the presence of a patient attendant.

2. A licensee may provide for the presence of a patient attendant on any occasion not described in subsection 1 if the presence of the patient attendant is desired by the licensee.

3. A patient attendant:

(a) May not be a family member of the licensee or the patient. This paragraph must not be construed to prevent a family member of the patient from also being present at a clinical encounter.

(b) Must be informed by the licensee concerning the scope of the clinical encounter before the encounter or be familiar with the scope of the clinical encounter through education and experience.

(c) Must, when practicable, be the gender that the patient, or, if the patient lacks the capacity to consent to medical care, the representative of the patient, prefers to be present at the clinical encounter.

4. Before performing an examination or procedure at which a patient attendant will be present, a licensee shall:

(a) Inform the patient attendant that:

(1) The primary role of the patient attendant is to protect and enhance the comfort of the patient and protect the patient from inappropriate behavior of the licensee, including, without limitation, sexual misconduct;

(2) The patient attendant is required to immediately report any suspected misconduct to the Board; and

(3) The secondary role of the patient attendant is to protect the licensee from unfounded allegations of improper behavior.

(b) Inform the patient or, if the patient lacks the capacity to consent to medical care, the representative of the patient:

(1) Of the scope of the clinical encounter and what the encounter will entail; and

(2) That the patient attendant will be present and the manner in which the patient attendant will observe the encounter.

5. The licensee shall:

(a) Include the first and last name of the patient attendant in the medical record of the clinical encounter; and

(b) Maintain separately from his or her medical records the contact information for all patient attendants present at his or her clinical encounters, including, without limitation, the mailing address and telephone number of each patient attendant.

6. A patient attendant is not required to be present:

(a) During a mammogram, unless requested by the patient or, if the patient lacks the capacity to consent to medical care, the representative of the patient.

(b) If the patient, or the representative of a patient who lacks the capacity to consent to medical care, declines the presence of a patient attendant in a signed writing. The licensee shall include the signed writing in the medical record of the clinical encounter.

(c) If including a patient attendant would delay or impede the delivery of emergency care.

7. As used in this section, "patient attendant" means a person, other than a licensee or a patient, who is present for and witness to a clinical encounter between a licensee and a patient.

Sec. 3. *In addition to the requirements set forth in NRS 630.2751, as amended by section 20 of Senate Bill No. 184, chapter 171, Statutes of Nevada 2021, at page 760, or NRS 630.2752, as amended by section 21 of Senate Bill No. 184, chapter 171, Statutes of Nevada 2021, at page 761, as applicable, an applicant for expedited licensure by endorsement as a physician assistant must submit to the Board with his or her application proof that the applicant is currently certified by the National Commission on Certification of Physician Assistants or its successor organization.*

Sec. 4. *In professional interactions with patients, colleagues, other providers of health care and members of the public, a perfusionist shall uphold the dignity of the profession and promote the safety and welfare of patients, including by:*

- 1. Holding the well-being of patients paramount.*
- 2. Avoiding conflicts of interest with patients. A perfusionist shall not engage in conduct for financial or other personal gain that violates the trust of a patient or the relationship between the perfusionist and the patient.*
- 3. Delegating responsibilities arising from the license of the perfusionist only to persons qualified to perform those responsibilities and personally supervising the rendering of such delegated responsibilities.*
- 4. Maintaining the confidentiality of the protected health information of a patient.*

Sec. 5. NAC 630.080 is hereby amended to read as follows:

630.080 1. For the purposes of paragraph ~~(e)~~ (d) of subsection 2 of NRS 630.160, an applicant for a license to practice medicine must pass:

(a) A written examination concerning the statutes and regulations relating to the practice of medicine in this State; and

(b) Except as otherwise provided in subsection 2, an examination, designated by the Board, to test the competency of the applicant to practice medicine, including, without limitation:

- (1) The Special Purpose Examination;
- (2) An examination testing competence to practice medicine conducted by physicians; or
- (3) Any other examination designed to test the competence of the applicant to practice medicine.

2. The Board will deem an applicant to have satisfied the requirements of paragraph (b) of subsection 1 if:

(a) Within 10 years before the date of an application for a license to practice medicine in this State, the applicant has passed:

- (1) Part III of the examination given by the National Board of Medical Examiners;
- (2) Component II of the Federation Licensing Examination;
- (3) Step 3 of the United States Medical Licensing Examination;
- (4) All parts of the examination to become a licentiate of the Medical Council of Canada;
- (5) The examination for primary certification or recertification by a specialty board of the American Board of Medical Specialties and received primary certification from that board; or
- (6) The Special Purpose Examination; or

(b) The applicant is currently certified and was certified prior to recertification or maintenance of certification requirements by a specialty board of the American Board of Medical Specialties, agrees to maintain that certification throughout any period of licensure in this State and has actively practiced clinical medicine for the past 5 years in any state or country in which the applicant is licensed or officially authorized to practice.

3. For the purposes of subparagraph (3) of paragraph ~~(e)~~ (b) of subsection 2 of NRS 630.160:

(a) An applicant for a license to practice medicine must pass Step 1, Step 2 and Step 3 of the United States Medical Licensing Examination in not more than a total of nine attempts and must pass Step 3 in not more than a total of three attempts; and

(b) An applicant:

(1) Who holds a degree of doctor of medicine must pass all steps of the examination within 7 years after the date on which the applicant first passes any step of the examination; or

(2) Who holds a degree of doctor of medicine and a degree of doctor of philosophy must pass all steps of the examination within 10 years after the date on which the applicant first passes any step of the examination.

4. For any examination conducted by the Board for a license to practice medicine, an applicant must answer correctly at least 75 percent of the questions propounded. The Board will use the weighted average score of 75, as determined by the Federation of State Medical Boards of the United States, Inc., to satisfy the required score of 75 percent for passage of the Special Purpose Examination and the United States Medical Licensing Examination.

5. The Board will authorize the Federation of State Medical Boards of the United States, Inc., to administer the Special Purpose Examination or the United States Medical Licensing Examination on behalf of the Board.

6. An applicant for a license to practice medicine and a person who holds a license to practice medicine must pay the reasonable costs of any examination required for licensure and any examination ordered pursuant to NRS 630.318.

Sec. 6. NAC 630.185 is hereby amended to read as follows:

630.185 NAC 630.185 to 630.230, inclusive, *and section 2 of this regulation* set forth the standards of practice established by the Board.

Sec. 7. NAC 630.230 is hereby amended to read as follows:

630.230 1. A person who is licensed as a physician or physician assistant shall not:

- (a) Falsify records of health care;
- (b) Falsify the medical records of a hospital so as to indicate his or her presence at a time when he or she was not in attendance or falsify those records to indicate that procedures were performed by him or her which were in fact not performed by him or her;
- (c) Render professional services to a patient while the physician or physician assistant is under the influence of alcohol or any controlled substance or is in any impaired mental or physical condition;
- (d) Acquire any controlled substances from any pharmacy or other source by misrepresentation, fraud, deception or subterfuge;
- (e) Prescribe anabolic steroids for any person to increase muscle mass for competitive or athletic purposes;
- (f) Make an unreasonable additional charge for tests in a laboratory, radiological services or other services for testing which are ordered by the physician or physician assistant and performed outside his or her own office;
- (g) Allow any person to act as a medical assistant in the treatment of a patient of the physician or physician assistant, unless the medical assistant has sufficient training to provide the assistance;

(h) Fail to provide adequate supervision of a medical assistant who is employed or supervised by the physician or physician assistant, including, without limitation, supervision provided in the manner described in NAC 630.810 or 630.820;

(i) If the person is a physician, fail to provide adequate supervision of a physician assistant or ***adequate collaboration with*** an advanced practice registered nurse ***with whom the physician is collaborating;***

(j) Fail to honor the advance directive of a patient without informing the patient or the surrogate or guardian of the patient, and without documenting in the patient's records the reasons for failing to honor the advance directive of the patient contained therein;

(k) Engage in the practice of writing prescriptions for controlled substances to treat acute pain or chronic pain in a manner that deviates from the policies set forth in the *Guidelines for the Chronic Use of Opioid Analgesics* adopted by reference in NAC 630.187; or

(l) Administer or use, or allow any person under his or her supervision, direction or control to administer or use, a single-use medical device:

(1) For more than one procedure;

(2) For more than one patient; or

(3) In a manner inconsistent with the manufacturer's instructions or directions included on or with the single-use medical device.

2. ***A licensee shall comply with all applicable provisions of chapters 440 and 629 of NRS and any regulation adopted pursuant thereto.***

3. As used in this section:

(a) "Chronic pain" has the meaning ascribed to it in section 3 of the *Guidelines for the Chronic Use of Opioid Analgesics* adopted by reference in NAC 630.187.

(b) “Single-dose vial” means a vial, including, without limitation, a sealed sterile vial, which may be accessed by insertion of a needle and which, according to the manufacturer’s instructions:

- (1) Contains only one dose of a medication; and
- (2) May be used for only one patient.

(c) “Single-use medical device” means a medical device that is intended for one use or on a single patient during a single procedure and includes, without limitation, a blade, clip, catheter, implant, insufflator, lancet, needle, sleeve, syringe and single-dose vial.

Sec. 8. NAC 630.770 is hereby amended to read as follows:

630.770 1. A perfusionist is subject to discipline pursuant to chapter 630 of NRS or denial of licensure by the Board if, after notice and hearing, the Board finds that the perfusionist:

(a) Willfully and intentionally made a false or fraudulent statement or submitted a forged or false document in applying for or renewing a license.

(b) Performed perfusion services other than as permitted by law.

(c) Committed malpractice in the performance of perfusion services, which may be evidenced by claims settled against the perfusionist.

(d) Disobeyed any order of the Board or an investigative committee of the Board or violated any provision of this chapter or chapter 630 of NRS.

(e) Is not competent to provide perfusion services.

(f) Lost his or her certification by the American Board of Cardiovascular Perfusion or its successor organization.

- (g) Failed to notify the Board of loss of certification by the American Board of Cardiovascular Perfusion or its successor organization within 30 days after the loss of certification.
- (h) Falsified or altered records of health care.
- (i) Rendered perfusion services to a patient while under the influence of alcohol or any controlled substance or in any impaired mental or physical condition.
- (j) Practiced perfusion after his or her license as a perfusionist had expired or been revoked or suspended.
- (k) Has been convicted of a felony, any offense involving moral turpitude or any offense relating to the practice of perfusion or the ability to practice perfusion.
- (l) Has had a license to practice perfusion revoked, suspended, modified or limited by another state or jurisdiction or has surrendered such a license or discontinued the practice of perfusion while under investigation by any licensing authority, a medical facility, a branch of the Armed Forces of the United States, an insurance company, an agency of the Federal Government or any employer.
- (m) Engaged in any sexual activity with a patient who was being treated by the perfusionist.
- (n) Engaged in disruptive behavior with physicians, hospital personnel, patients, members of the family of a patient or any other person if the behavior interferes with the care of a patient or has an adverse impact on the quality of care rendered to a patient.
- (o) Engaged in conduct which brings the profession of perfusion into disrepute, including, without limitation, conduct that violates ~~any of the following ethical guidelines:~~

~~—— (1) A perfusionist shall at all times hold the well-being of his or her patients paramount and shall not act in such a way as to bring the interests of the perfusionist into conflict with the interests of his or her patients.~~

~~—— (2) A perfusionist shall not engage in conduct that violates the trust of a patient and exploits the relationship between the perfusionist and the patient for financial or other personal gain.~~

~~—— (3) A perfusionist shall not delegate licensed responsibilities to a person who is not qualified to perform those responsibilities.] *the provisions of section 4 of this regulation.*~~

(p) Engaged in sexual contact with a surrogate of a patient or with any person related to a patient, including, without limitation, a spouse, parent or legal guardian of a patient, that exploits the relationship between the perfusionist and the patient in a sexual manner.

(q) Made or filed a report that the perfusionist knew to be false, failed to file a record or report as required by law or willfully obstructed or induced another person to obstruct any such filing.

(r) Failed to report to the Board any person that the perfusionist knew, or had reason to know, was in violation of any provision of this chapter or chapter 630 of NRS relating to the practice of perfusion.

(s) Has been convicted of a violation of any federal or state law regulating the prescription, possession, distribution or use of a controlled substance.

(t) Held himself or herself out or permitted another person to represent the perfusionist as a licensed physician.

(u) Violated any provision that would subject a person to discipline pursuant to NRS 630.301 to 630.3065, inclusive, or NAC 630.230.

2. A person who has been licensed as a perfusionist by the Board but is not currently licensed, has surrendered his or her license or has failed to renew his or her license may be disciplined by the Board upon hearing a complaint for disciplinary action against the person.

3. If a perfusionist loses his or her certification by the American Board of Cardiovascular Perfusion or its successor organization, his or her license to practice perfusion is automatically suspended pending further action by the Board.