

NEBRASKA DEPARTMENT OF HEALTH AND HUMAN SERVICES
NOTICE OF PUBLIC HEARING

October 5, 2020
10:00 a.m. Central Time
Nebraska State Office Building – Lower Level A
301 Centennial Mall South, Lincoln, Nebraska
Phone call information: 888-820-1398; Participant code: 3213662#

The purpose of this hearing is to receive comments on proposed changes to Title 172, Chapter 90 of the Nebraska Administrative Code (NAC) – *Licensure and Supervision of Physician Assistants*. The proposed changes remove all duplicative statutory language from the regulations and remove any repetitive regulatory language found in 172 NAC 10. Proposed changes also include: updating definitions; clarifying the language regarding the board's consideration of requests to waive the limit upon the number of physician assistants that a physician may supervise at any time; requiring proof of successful completion of the Physician Assistant National Certifying Examination as a licensure requirement; and updating the unprofessional conduct section to reference 172 NAC 88.

Authority for these regulations is found in Neb. Rev. Stat. § 81-3117(7).

Due to the current public health crisis, the agency will enforce any Directed Health Measure Order on the size of gatherings that is in effect at the time of the hearing. In order to encourage participation in this public hearing, a phone conference line will be set up for any member of the public to call in and provide oral comments.

Interested persons may provide verbal comments by participating via phone conference line by calling 888-820-1398; Participant code: 3213662#.

Interested persons may provide written comments by mail, fax, or email, no later than the day of the hearing to: DHHS Legal Services, PO Box 95026, Lincoln, NE 68509-5026, (402) 742-2382 or dhhs.regulations@nebraska.gov, respectively.

A copy of the proposed changes is available online at <http://www.sos.ne.gov>, or by contacting DHHS at the mailing address or email above, or by phone at (402) 471-8417. The fiscal impact statement for these proposed changes may be obtained at the office of the Secretary of State, Regulations Division, 1201 N Street, Suite 120, Lincoln, NE 68508, or by calling (402) 471-2385.

Auxiliary aids or reasonable accommodations needed to participate in a hearing can be requested by calling (402) 471-8223. Individuals with hearing impairments may call DHHS at (402) 471-9570 (voice and TDD) or the Nebraska Relay System at 711 or (800) 833-7352 TDD at least 2 weeks prior to the hearing.

FISCAL IMPACT STATEMENT

Agency: Department of Health and Human Services	
Title: 172	Prepared by: Jesse Cushman
Chapter: 90	Date prepared: 7-3-19
Subject: Licensure and Supervision of Physician Assistants	Telephone: (402) 471-4915

Type of Fiscal Impact:

	State Agency	Political Sub.	Regulated Public
No Fiscal Impact	(<input checked="" type="checkbox"/>)	(<input checked="" type="checkbox"/>)	(<input type="checkbox"/>)
Increased Costs	(<input type="checkbox"/>)	(<input type="checkbox"/>)	(<input checked="" type="checkbox"/>)
Decreased Costs	(<input type="checkbox"/>)	(<input type="checkbox"/>)	(<input type="checkbox"/>)
Increased Revenue	(<input type="checkbox"/>)	(<input type="checkbox"/>)	(<input type="checkbox"/>)
Decreased Revenue	(<input type="checkbox"/>)	(<input type="checkbox"/>)	(<input type="checkbox"/>)
Indeterminable	(<input type="checkbox"/>)	(<input type="checkbox"/>)	(<input type="checkbox"/>)

Provide an Estimated Cost & Description of Impact:

State Agency: **No Change**

Political Subdivision: **No Change**

Regulated Public: **No Change**

If indeterminable, explain why:

TITLE 172 PROFESSIONAL AND OCCUPATIONAL LICENSURE

CHAPTER 90 LICENSURE AND SUPERVISION OF PHYSICIAN ASSISTANTS

001. SCOPE AND AUTHORITY. These regulations govern the licensure and supervision of physician assistants under Nebraska Revised Statute (Neb. Rev. Stat.) §§ 38-2001 to 38-2063 of the Medicine and Surgery Practice Act and the Uniform Credentialing Act (UCA).

002. DEFINITIONS. Definitions are set out in the Medicine and Surgery Practice Act, the Uniform Credentialing Act, 172 Nebraska Administrative Code (NAC) 10, and this chapter.

002.01 BACKUP PHYSICIAN. A physician designated by the supervising physician to ensure supervision of the physician assistant in the supervising physician's absence. A backup physician is subject to the same requirements imposed upon the supervising physician when the backup physician is acting as a supervising physician.

002.02 PRIMARY PRACTICE SITE. Where the supervising physician maintains his or her primary practice.

002.03 SECONDARY PRACTICE SITES. A practice site which is not the primary practice site of the supervising physician or physicians.

003. LICENSE REQUIREMENTS. To obtain a license, an individual must submit a complete application provided by the Department and provide documentation demonstrating that the applicant meets the licensing requirements set out in Neb. Rev. Stat. §§ 38-2049, 38-131, 172 NAC 10, and this chapter.

003.01 EDUCATION. Submit an official transcript, sent directly from the issuing institution, verifying successful completion of an approved program for the education of physician assistants.

003.02 EXAMINATION. Submit proof of successful completion of the Physician Assistant National Certifying Examination.

003.03 TEMPORARY LICENSE. To receive a temporary license to practice as a physician assistant, an individual must have met the education requirements of this chapter but not yet passed the Physician Assistant National Certifying Examination; however, there must be no other grounds for denial of the license.

003.03(A) TEMPORARY PRACTICE. A physician assistant with a temporary credential may practice only when the supervising physician is actually present at the practice site.

004. RENEWAL, WAIVER OF CONTINUING EDUCATION, AND INACTIVE STATUS. The applicant must meet the requirements set out in 172 NAC 10 and this chapter.

004.01 PHYSICIAN ASSISTANT EXPIRATION. All physician assistant licenses expire on October 1 of each odd-numbered year.

004.02 TEMPORARY PHYSICIAN ASSISTANT TERM AND EXPIRATION. Temporary physician assistant licenses are only good for one year from date of issuance and may be extended at the discretion of the Department with the recommendation of the Board.

005. CONTINUING COMPETENCY REQUIREMENTS. On or before the expiration date, individuals holding an active license from the State of Nebraska must earn one of the following during the preceding 24-month period:

- (A) 50 hours of Category 1 continuing education approved by the Accreditation Council for Continuing Medical Education (ACCME), the American Osteopathic Association (AOA), or the American Academy of Physician Assistants (AAPA); or
- (B) Meet the National Commission on Certification of Physician Assistants (NCCPA) requirements within the previous 24-month period.

005.01 CONTINUING EDUCATION CARRY OVER. Hours are to be earned within the 24 months preceding the date of expiration, except that a licensee who has earned more than 50 hours required for renewal for a 24-month renewal period, is allowed to carry over up to 25 hours to the next 24-month renewal period.

005.02 ACCEPTABLE DOCUMENTATION. Acceptable documentation that the credential holder has met the continuing competency requirements include:

- (A) Proof of current certification with the National Commission on Certification of Physician Assistants (NCCPA); or
- (B) Documentation of completion of continuing education approved by the Accreditation Council for Continuing Medical Education (ACCME), the American Osteopathic Association (AOA), or the American Academy of Physician Assistants (AAPA).

006. REQUIREMENTS FOR SUPERVISION OF PHYSICIAN ASSISTANTS. Supervising physicians must meet the requirements of Neb. Rev. Stat. § 38-2050 and this chapter.

006.01 SCOPE OF PRACTICE AGREEMENT. A supervising physician must define the scope of practice of the physician assistant, including physician assistant prescribing authority, in the physician assistant's scope of practice agreement as set forth in Neb. Rev. Stat. § 38-2055.

006.02 REQUIREMENTS FOR LESS THAN 2 YEARS OF EXPERIENCE. For physician assistants with less than 2 years' experience, the following minimum requirements for the personal presence of the supervising physician must be met:

- (A) A physician assistant with a temporary license must practice only when the supervising physician is actually present at the practice site;

- (B) A physician assistant that has held a permanent license for less than 3 months must have the supervising physician physically present a minimum of 20% of the time when the physician assistant is providing medical services;
- (C) A physician assistant that has held a permanent license for more than 3 months must have the supervising physician physically present a minimum of 10% of the time when the physician assistant is providing medical services; and
- (D) The time the supervising physician and the physician assistant with a permanent license are together may be less than 10% if the supervising physician shows good cause and is approved by the Board. In determining good cause, factors to consider include but are not limited to:
 - (i) The proposed practice site;
 - (ii) The percentage of time together;
 - (iii) The experience of the physician assistant;
 - (iv) The experience the supervising physician has had supervising physician assistants;
 - (v) Any previous knowledge the supervising physician has had with the physician assistant's patient care in the community;
 - (vi) If the site is designated as a state or federal shortage or underserved area; and
 - (vii) The general level of patient problem complexity.

006.03 PHYSICIAN ASSISTANT SERVICES PERFORMED MINIMUM REQUIREMENTS. Physician assistants must meet the requirements set forth in Neb. Rev. Stat. § 38-2047 and this chapter.

- (A) A physician assistant may render medical services in a setting geographically remote from the supervising physician, except that a physician assistant with less than 2 years of experience must comply with the following standards of supervision:
 - (i) The physician assistant must hold a permanent license; and
 - (ii) The supervising physician must review a minimum of 20 patient medical records per month which represent a sample of the patient care the physician assistant has provided. If the physician assistant has provided patient care to fewer than 20 patients per month, the supervising physician must review 100% of the patient medical records.

006.04 PHYSICIAN ASSISTANT SUPERVISION WAIVER. The Board may consider a request for waiving the requirement that a supervising physician may supervise no more than 4 physician assistants at any time, as set forth in Neb. Rev. Stat. § 38-2050(4). In determining good cause, the factors considered by the Board include but are not limited to:

- (A) The type of practice setting;
- (B) The experience of the physician assistants;
- (C) The experience the supervising physician has had with physician assistants; and
- (D) The general level of patient problem complexity.

007. UNPROFESSIONAL CONDUCT. Unprofessional conduct is set out in Neb. Rev. Stat. § 38-179, and 172 NAC 88 as applicable to physician assistants.

DRAFT
07-06-2020

NEBRASKA DEPARTMENT OF
HEALTH AND HUMAN SERVICES

172 NAC 90

008. REINSTATEMENT. The applicant must meet the requirements set out in 172 NAC 10.

009. FEES. Fees are set out in 172 NAC 2, and Neb. Rev. Stat. § 38-151.

TITLE 172 _____ PROFESSIONAL AND OCCUPATIONAL LICENSURE

CHAPTER 90 _____ LICENSURE AND SUPERVISION OF PHYSICIAN ASSISTANTS

~~90-001 SCOPE AND AUTHORITY: These regulations govern the credentialing and supervision of physician assistants under Neb. Rev. Stat. §§ 38-2001 to 38-2061 and the Uniform Credentialing Act (UCA).~~ Kept in Section 001 as modified

~~90-002 DEFINITIONS~~ Kept in Section 002 as modified

~~Active addiction~~ means current physical or psychological dependence on alcohol or a substance, which develops following the use of alcohol or a substance on a periodic or continuing basis.

~~Alcohol or substance abuse~~ means a maladaptive pattern of alcohol or substance use leading to clinically significant impairment or distress as manifested by one or more of the following occurring at any time during the same 12-month period:

- ~~1. Recurrent alcohol or substance use resulting in a failure to fulfill major role obligations at work, school, or home;~~
- ~~2. Recurrent alcohol or substance use in situations in which it is physically hazardous;~~
- ~~3. Recurrent legal problems related to alcohol or substance use; or~~
- ~~4. Continued alcohol or substance use despite having persistent or recurrent social or interpersonal problems caused or exacerbated by the effects of the alcohol or substance use.~~

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

~~Attest or Attestation~~ means that the individual declares that all statements on the application are true and complete.

~~Backup physician~~ means a physician designated by the supervising physician to ensure supervision of the physician assistant in the supervising physician's absence. A backup physician is subject to the same requirements imposed upon the supervising physician when the backup physician is acting as a supervising physician. Kept in Section 002 as modified

~~Board~~ means the Board of Medicine and Surgery.

Complete application means an application that contains all of the information requested on the application, with attestation to its truth and completeness, and that is submitted with the required fees and all required documentation.

Confidential information means information protected as privileged under applicable law.

Consumer means a person receiving health or health-related services or environmental services and includes a patient, client, resident, customer, or person with a similar designation.

Conviction means a plea or verdict of guilty or a conviction following a plea of nolo contendere or non vult contendere made to a formal criminal charge, or a judicial finding of guilt irrespective of the pronouncement of judgment or the suspension thereof, and includes instances in which the imposition or the execution of sentence is suspended following a judicial finding of guilt and the defendant is placed on probation.

Credential means a license, certificate, or registration.

Department means the Division of Public Health of the Department of Health and Human Services.

Dependence means a maladaptive pattern of alcohol or substance use, leading to clinically significant impairment or distress, as manifested by three or more of the following occurring at any time in the same 12-month period:

1. Tolerance as defined by either of the following:
 - a. A need for markedly increased amounts of alcohol or the substance to achieve intoxication or desired effect; or
 - b. A markedly diminished effect with continued use of the same amount of alcohol or the substance;
2. Withdrawal as manifested by either of the following:
 - a. The characteristic withdrawal syndrome for alcohol or the substance as referred to in the Diagnostic and Statistical Manual of Mental Disorders, Fourth Edition, published by the American Psychiatric Association; or
 - b. Alcohol or the same substance or a closely related substance is taken to relieve or avoid withdrawal symptoms;
3. Alcohol or the substance is often taken in larger amounts or over a longer period than was intended;
4. A persistent desire or unsuccessful efforts to cut down or control alcohol or substance use;
5. A great deal of time is spent in activities necessary to obtain alcohol or the substance, to use alcohol or the substance; or to recover from the effects of use of alcohol or the substance;
6. Important social, occupational, or recreational activities are given up or reduced because of alcohol or substance use; or

7. ~~Alcohol or substance use continues despite knowledge of having had a persistent or recurrent physical or psychological problem that was likely to have been caused or exacerbated by alcohol or the substance.~~

~~Director means the Director of Public Health of the Division of Public Health or his/her designee.~~

~~Inactive credential means a credential which the credential holder has voluntarily placed on inactive status and by which action has terminated the right to practice or represent him/herself as having an active credential.~~

~~License means an authorization issued by the Department to an individual to engage in a profession or to a business to provide services which would otherwise be unlawful in this state in the absence of such authorization.~~

~~Military service means full-time duty in the active military service of the United States, a National Guard call to active service for more than 30 consecutive days, or active service as a commissioned officer of the Public Health Service or the National Oceanic and Atmospheric Administration. Military service may also include any period during which a servicemember is absent from duty on account of sickness, wounds, leave, or other lawful cause. (From the Servicemembers Civil Relief Act, 50 U.S.C. App 501 et seq., as it existed on January 1, 2007.)~~

~~Pattern of incompetent or negligent conduct means a continued course of incompetent or negligent conduct in performing the duties of the profession.~~

~~Physician assistant means any person who graduates from an approved program, who has passed a proficiency examination, and whom the Department, with the recommendation of the Board, approves to perform medical services under the supervision of a physician.~~

~~Primary practice site means where the supervising physician(s) maintains his/her primary practice. Kept in Section 002 as modified~~

~~Profession means any profession or occupation named in subsection (1) or (2) of Neb. Rev. Stat. § 38-121.~~

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

~~Secondary sites means those practice sites which are not the primary practice site of the supervising physician. Kept in Section 002 as modified~~

~~Served in the regular armed forces has the same meaning as "military service" in these regulations.~~

~~Supervising physician means a licensed physician who supervises a physician assistant.~~

~~Supervision means the ready availability of the supervising physician for consultation and direction of the activities of the physician assistant. Contact with the supervising physician by telecommunication is sufficient to show ready availability.~~

~~90-003 INITIAL CREDENTIAL~~ Kept in Section 003 as modified

~~90-003.01 Qualifications: To receive a credential to practice as a physician assistant, an individual must meet the following qualifications:~~

- ~~1. Age and Good Character: Be at least 19 years old and of good character;~~
- ~~2. Citizenship/Lawful Presence: Be a citizen of the United States, an alien lawfully admitted into the United States who is eligible for a credential under the Uniform Credentialing Act, or a nonimmigrant lawfully present in the United States who is eligible for a credential under the Uniform Credentialing Act.~~
- ~~3. Education: Successful completion of an approved program for the education of physician assistants.~~
- ~~4. Examination: Successful completion of the proficiency examination.~~

~~90-003.01A To receive a temporary credential to practice as a physician assistant, an individual must meet the following qualifications:~~

- ~~1. Age and Good Character: Be at least 19 years old and of good character;~~
- ~~2. Citizenship/Lawful Presence: Be a citizen of the United States, an alien lawfully admitted into the United States who is eligible for a credential under the Uniform Credentialing Act, or a nonimmigrant lawfully present in the United States who is eligible for a credential under the Uniform Credentialing Act.~~
- ~~3. Education: Successful completion of an approved program for the education of physician assistants but have not passed the proficiency examination when there are no grounds for denial of the credential.~~

~~90-003.01B A temporary credential will be issued for a period not to exceed one year and under such conditions as determined by the Department, with recommendation of the Board. Such period may be extended by the Department with the recommendation of the Board.~~ Kept in section 003 as modified

~~90-003.01C A physician assistant with a temporary credential may practice only when the supervising physician is actually present at the practice site.~~ Kept in section 003 as modified

~~90-003.02 Application: To apply for a credential to practice as a physician assistant, the individual must submit a complete application to the Department. A complete application includes all required documentation, the required fee, and a written application. The~~

applicant may obtain an application from the Department or construct an application that must contain the following information:

1. Written Application:
 - a. Personal Information:
 - (1) ~~The legal name of the applicant, maiden name (if applicable), and any other names by which the applicant is known;~~
 - (2) ~~Date of birth (month, day, and year);~~
 - (3) ~~Place of birth (city and state or country if not born in the United States);~~
 - (4) ~~Mailing address (street, rural route, or post office address; and city, state, and zip code, or country information);~~
 - (5) ~~The applicant's:~~
 - (a) ~~Social Security Number (SSN);~~
 - (b) ~~Alien Registration Number ("A#"); or~~
 - (c) ~~Form I-94 (Arrival-Departure Record) number.~~

~~Certain applicants may have both a SSN and an A# or I-94 number, and if so, must report both.~~
 - (6) ~~The applicant's telephone number including area code (optional);~~
 - (7) ~~The applicant's e-mail address (optional);~~
 - (8) ~~The applicant's fax number (optional);~~
 - b. Practice Before Application: ~~The applicant must state:~~
 - (1) ~~That s/he has not practiced as a physician assistant in Nebraska before submitting the application; or~~
 - (2) ~~If s/he has practiced as a physician assistant in Nebraska before submitting the application, the actual number of days practiced in Nebraska before submitting the application for a credential and the name and location of practice; and~~
 - c. ~~Indication of whether the applicant is applying for a temporary credential;~~
 - d. ~~Indication of whether the applicant has taken or will be taking the proficiency examination, including dates and location;~~
 - e. ~~Education: name and location of the applicant's approved program for the education of physician assistants;~~
 - f. ~~Indication of whether the applicant holds a Federal Controlled Substances Registration. If yes, list number and expiration date;~~
 - g. ~~The applicant must also provide information related to the following, as requested on the application of the Department:~~
 - (1) ~~History of charges, complaints, disciplinary actions, adverse actions, or other actions against a professional license or permit in any state or jurisdiction including, but not limited to:~~
 - (a) ~~Voluntary surrenders or voluntary limitations;~~
 - (b) ~~Currently pending investigations or complaints;~~
 - (c) ~~Prior refusals to issue, refusals to renew, or denials of a license or permit;~~

- ~~(2) Information relating to fitness to practice including, but not limited to:
 - ~~(a) Addiction, dependence upon or chronic impairment by alcohol, narcotics, barbiturates, or other drugs which may cause physical and/or psychological dependence;~~
 - ~~(b) Physical, mental, or emotional conditions which impair the applicant's ability to practice the profession safely and competently;~~~~
- ~~(3) History of any remedial or disciplinary actions during the applicant's physician assistant educational program or postgraduate training including, but not limited to restrictions, suspensions, terminations, request for voluntary resignation, probation, counseling, and receipt of warnings;~~
- ~~(4) History of adverse actions initiated or carried out related to hospital or institutional privileges including, but not limited to, involuntary adverse actions, voluntary resignations or suspensions, or withdrawals;~~
- ~~(5) Any employment disciplinary actions or non-renewal of an employment contract;~~
- ~~(6) Criminal history, including convictions and charges, complaints or other actions that did not result in convictions;~~
- ~~(7) History of adverse actions by the Federal Drug Enforcement Administration (DEA) or a state controlled substances agency including, but not limited to:
 - ~~(a) Denials of registration;~~
 - ~~(b) Calls to come before a licensing agency or other lawful authority in relation to DEA controlled substances;~~
 - ~~(c) Surrenders of a state or federal controlled substances registration;~~
 - ~~(d) Restrictions or disciplinary actions of a state or federal controlled substances registration;~~~~
- ~~(8) History of professional liability claims, adverse judgments, settlements, or awards, including any pending professional liability claims.~~
- ~~h. Attestation: The applicant must attest that:
 - ~~(1) S/he has read the application or has had the application read to him/her; and~~
 - ~~(2) All statements on the application are true and complete.~~~~
- ~~2. Documentation: The applicant must submit the following documentation with the application:
 - ~~a. Evidence of age, such as:
 - ~~(1) Driver's license;~~
 - ~~(2) Birth certificate;~~
 - ~~(3) Marriage license that provides date of birth;~~~~~~

- ~~_____ (4) Transcript that provides date of birth;~~
- ~~_____ (5) U.S. State identification card;~~
- ~~_____ (6) Military identification; or~~
- ~~_____ (7) Other similar documentation;~~
- ~~_____ b. Evidence of:~~
 - ~~_____ (1) Other Credential Information: If the applicant holds a credential to provide health services, health-related services, or environmental services in Nebraska or in another jurisdiction, the applicant must submit the state, credential number, type of credential, date issued, and expiration date of each credential where the applicant has been or is currently credentialed. The applicant must have the licensing agency submit to the Department a certification of his/her credential;~~
 - ~~_____ (2) Disciplinary Action: A list of any disciplinary actions taken against the applicant's credential and a copy of the disciplinary action(s), including charges and disposition;~~
 - ~~_____ (3) Denial: If the applicant was denied a credential or denied the right to take a credentialing examination, an explanation of the basis for the denial;~~
 - ~~_____ (4) Conviction Information: If the applicant has been convicted of a felony or misdemeanor, the applicant must submit to the Department:
 - ~~_____ (a) A list of any misdemeanor or felony convictions;~~
 - ~~_____ (b) A copy of the court record, which includes charges and disposition;~~
 - ~~_____ (c) Explanation from the applicant of the events leading to the conviction (what, when, where, why) and a summary of actions the applicant has taken to address behaviors/actions related to the conviction;~~
 - ~~_____ (d) All addiction/mental health evaluations and proof of treatment, if the conviction involved a drug and/or alcohol related offense and if treatment was obtained and/or required;~~
 - ~~_____ (e) A letter from the probation officer addressing probationary conditions and current status, if the applicant is currently on probation; and~~
 - ~~_____ (f) Any other information as requested by the Board/Department;~~~~
- ~~_____ c. Evidence that the applicant is a citizen of the United States, an alien lawfully admitted into the United States who is eligible for a credential under the Uniform Credentialing Act, or a nonimmigrant lawfully present in the United States who is eligible for a credential under the Uniform Credentialing Act.~~
- ~~_____ d. Evidence of citizenship, lawful permanent residence, and/or immigration status may include a copy of:
 - ~~_____ (1) A U.S. Passport (unexpired or expired);~~~~

- (2) ~~A birth certificate issued by a state, county, municipal authority or outlying possession of the United States bearing an official seal;~~
- (3) ~~An American Indian Card (I-872);~~
- (4) ~~A Certificate of Naturalization (N-550 or N-570);~~
- (5) ~~A Certificate of Citizenship (N-560 or N-561);~~
- (6) ~~Certification of Report of Birth (DS-1350);~~
- (7) ~~A Consular Report of Birth Abroad of a Citizen of the United States of America (FS-240);~~
- (8) ~~Certification of Birth Abroad (FS-545 or DS-1350);~~
- (9) ~~A United States Citizen Identification Card (I-197 or I-179);~~
- (10) ~~A Northern Mariana Card (I-873);~~
- (11) ~~A Green Card, otherwise known as a Permanent Resident Card (Form I-551), both front and back of the card;~~(12) ~~An unexpired foreign passport with an unexpired Temporary I-551 stamp bearing the same name as the passport;~~
- (13) ~~A document showing an Alien Registration Number ("A#"). An Employment Authorization Card/Document is not acceptable; or~~
- (14) ~~A Form I-94 (Arrival-Departure Record);~~

- e. ~~Official documentation showing successful completion of an approved program for the education of physician assistants sent directly to the Department from the institution. Kept in section 003 as modified~~
- f. ~~Official documentation showing successful completion of the proficiency examination submitted directly to the Department from the examination entity. Kept in section 003 as modified~~

- 3. ~~Fee: The applicant must submit the required license fee along with the application and all required documentation.~~

~~90-003.02A Criminal Background Checks: An applicant must:~~

- 1. ~~Obtain two fingerprint cards from the Department or from any State Patrol office or law enforcement agency;~~
- 2. ~~Print the following information on the fingerprint cards:~~
 - a. ~~Name;~~
 - b. ~~Address;~~
 - c. ~~Social Security Number;~~
 - d. ~~Date of birth;~~
 - e. ~~Place of birth;~~
 - f. ~~Any physical identifiers; and~~
 - g. ~~In the space on the fingerprint cards marked "Reason Fingerprinted", print "Credential";~~
- 3. ~~Report to any State Patrol office, law enforcement agency, or other entity that offers the service of fingerprinting to provide their fingerprints on the fingerprint cards; and~~
- 4. ~~Forward the completed fingerprint cards and payment for the criminal~~

background check as specified in 172 NAC 90-003.02A1 to the Nebraska State Patrol, CID Division, P.O. Box 94907, Lincoln, NE 68509.

~~90-003.02A1~~ Payment for criminal background checks is the responsibility of the individual and can be made by personal check, money order or cashier's check, payable to the Nebraska State Patrol. The fee for criminal background checks is established by the Nebraska State Patrol and can be found on the web site of the Department.

~~90-003.02A2~~ Submission by the individual of completed fingerprint cards and the appropriate payment to the Nebraska State Patrol authorizes the release of the results of the criminal background check to the Department. The results will be forwarded by the Nebraska State Patrol directly to the Department for consideration with the application for licensure.

~~90-003.03~~ Department Review: The Department will act within 150 days upon all completed applications for initial credentialing.

~~90-003.04~~ Denial of Initial Credential: If an applicant for an initial credential does not meet all of the requirements for a credential, the Department will deny issuance of a credential. If the applicant is found to have committed any act which would be grounds for denial of a credential as listed in 172 NAC 90-008, the Department may deny issuance of a credential. To deny a credential, the Department will notify the applicant in writing of the denial and the reasons for the determination. The denial will become final 30 days after mailing the notice unless the applicant, within that 30-day period, requests a hearing in writing. The hearing will be conducted in accordance with the Administrative Procedure Act and 184 NAC 1, the Department's Rules of Practice and Procedure for Administrative Hearings.

~~90-003.05~~ Withdrawn Applications: An applicant for a credential who withdraws his/her application or whose application is rejected by the Department prior to being reviewed by the Board will be allowed the return of his/her fee, except for a \$25 administrative fee to be retained by the Department.

~~90-003.06~~ Practice Prior to Credential: An individual who practices prior to issuance of a credential is subject to assessment of an administrative penalty under 172 NAC 90-011 or such other action as provided in the statutes and regulations governing the credential.

~~90-003.07~~ Confidentiality: Social Security Numbers obtained under this section are not public information but may be shared by the Department for administrative purposes if necessary and only under appropriate circumstances to ensure against any unauthorized access to this information.

~~90-003.08~~ Address Information: Each credential holder must notify the Department of any change to the address of record.

~~90-003.09 Non-English Documents:~~ Any documents written in a language other than English must be accompanied by a complete translation into the English language. The translation must be an original document and contain the notarized signature of the translator. An individual may not translate his/her own documents.

~~90-004 CONTINUING COMPETENCY REQUIREMENTS:~~ Each person holding an active credential as a physician assistant within the state must, on or before the date of expiration of the credential, comply with the continuing competency requirements for his/her profession, unless the requirements are waived in accordance with 172 NAC 90-005.03 and 90-005.04. Each credentialed individual is responsible for maintaining certificates or records of continuing competency activities. **Moved to section 005 as modified**

~~On or before the credential expiration date, the credential holder must:~~

- ~~1. Earn 50 hours of Category 1 continuing education approved as follows:~~
 - ~~a. Approved by the Accreditation Council for Continuing Medical Education (ACCME); the American Osteopathic Association (AOA) or the American Academy of Physician Assistants (AAPA); or~~
 - ~~b. Meet the National Commission on Certification of Physician Assistants (NCCPA) requirements within the previous 24 month period.~~
- ~~2. Hours are to be earned within 24 months of the date of expiration, except that a licensee who has earned more than 50 hours required for renewal for one 24 month renewal period, is allowed to carry over up to 25 hours to the next 24 month renewal period.~~ **Moved to section 005 as modified**

~~90-005 RENEWAL:~~ An individual who wants to renew his/her physician assistant credential must request renewal as specified in 172 NAC 90-005.02. All physician assistant credentials issued by the Department will expire on October 1 of each odd-numbered year. **Moved to section 004 as modified**

~~90-005.01 Renewal Notice:~~ At least 30 days before the expiration of a credential, the Department will notify each credential holder by regular mail to the last known address of record. The renewal notice will include:

- ~~1. The type of credential;~~
- ~~2. The credential number;~~
- ~~3. The expiration date;~~
- ~~4. Continuing competency requirements for renewal;~~
- ~~5. The amount of the renewal fee; and~~
- ~~6. Information on how to request renewal and how to place a credential on inactive status.~~

~~90-005.02 Renewal Procedures: The request for renewal may be submitted in person or by mail or Internet, and must include all required documentation and the renewal fee, which must be paid no later than the expiration date. The applicant may obtain an application from the Department or construct an application.~~

- ~~1. Application: The applicant, on his/her application:
 - a. Must provide the following information:
 - (1) The legal name of the applicant, maiden name (if applicable), and any other names by which the applicant is known;
 - (2) Mailing address (street, rural route, or post office address; and city, state, and zip code, or country information);
 - (3) The applicant's:
 - (a) Social Security Number (SSN), or
 - (b) Alien Registration Number ("A#"); or
 - (c) Form I-94 (Arrival-Departure Record) number.
Certain applicants may have both a SSN and an A# or I-94 number, and if so, must report both.
 - b. May provide the following information about him/herself:
 - (1) The applicant's telephone number including area code;
 - (2) The applicant's e-mail address; and
 - (3) The applicant's fax number; and
 - c. Must attest that s/he has met the continuing competency requirements specified in 172 NAC 90-004 or has requested a waiver if s/he meets the requirements of 172 NAC 90-005.03 and/or 90-005.04.~~
- ~~2. Documentation: The applicant must submit the following documentation with the application:
 - a. If the applicant is not a United States citizen, s/he must submit evidence of lawful admission or presence in the United States, which may include a copy of:
 - (1) A Green Card, otherwise known as a Permanent Resident Card (Form I-551), both front and back of the card;
 - (2) An unexpired foreign passport with an unexpired Temporary I-551 stamp bearing the same name as the passport;
 - (3) A document showing an Alien Registration Number ("A#"). An Employment Authorization Card/Document is not acceptable; or
 - (4) A Form I-94 (Arrival-Departure Record);
 - b. Other Credential: If the applicant holds a credential to provide health services, health-related services, or environmental services in Nebraska or in another jurisdiction, the applicant must submit the state, credential number, type of credential, date issued, and~~

~~expiration date of each credential where the applicant has been or is currently credentialed;~~

- ~~c. Disciplinary Action: A list of any disciplinary actions taken against the applicant's credential and a copy of the disciplinary action(s), including charges and disposition;~~
- ~~d. Denial: If the applicant was denied a credential or denied the right to take a credentialing examination, an explanation of the basis for the denial;~~
- ~~e. Conviction Information: If the applicant has been convicted of a felony or misdemeanor since his/her last renewal or during the time period since initial credentialing if such occurred within the previous two years, the applicant must submit to the Department:
 - ~~(1) A list of any misdemeanor or felony convictions;~~
 - ~~(2) A copy of the court record, which includes charges and disposition;~~
 - ~~(3) Explanation from the applicant of the events leading to the conviction (what, when, where, why) and a summary of actions the applicant has taken to address the behaviors/actions related to the conviction;~~
 - ~~(4) All addiction/mental health evaluations and proof of treatment, if the conviction involved a drug and/or alcohol related offense and if treatment was obtained and/or required;~~
 - ~~(5) A letter from the probation officer addressing probationary conditions and current status, if the applicant is currently on probation; and~~
 - ~~(6) Any other information as requested by the Board/Department;~~~~

~~3. The renewal fee according to 172 NAC 2.~~

~~90-005.03 Waivers for Military Service: A credential holder who has served in the regular armed forces of the United States during part of the credentialing period immediately preceding the renewal date, or is actively engaged in military service as defined in 172 NAC 90-002, is not required to pay the renewal fee or to meet the continuing competency requirements if acceptable documentation is submitted to the Department. The individual must document his/her military service by submitting to the Department:~~

- ~~1. Military identification proving that s/he has been in active service;~~
- ~~2. Military orders; or~~
- ~~3. A letter from his/her Commanding Officer indicating that s/he has been on active duty.~~

~~Upon receipt of acceptable documentation, the Department will waive the fee and the continuing competency requirements and renew the credential. The credential will remain~~

active until the next renewal period.

~~90-005.04 Waiver of Continuing Competency Requirements: The Department waives continuing competency requirements for individuals who were first credentialed within the 24-month period immediately preceding the renewal date.~~

~~90-005.05 Audit of Continuing Competency Requirements: The Department or the Board may biennially select, in a random manner, a sample of the renewal applications for audit of continuing competency requirements. Each credential holder selected for audit must produce documentation of the continuing competency activities.~~

~~90-005.05A The Department/Board will notify each selected credential holder by mail. Failure to notify the Department of a current mailing address will not absolve the credential holder from the requirement for audit.~~

~~90-005.05B Within 30 days, each selected credential holder must respond by submitting documentation that s/he has met the requirements for continuing competency. An extension beyond 30 days for submission of the documentation may be granted at the discretion of the Department. Documentation submitted by the credential holder will not be returned.~~

~~90-005.05C Acceptable documentation that the credential holder has met the continuing competency requirements include:~~

- ~~1. Proof of current certification with the National Commission on Certification of Physician Assistants (NCCPA); or~~
- ~~2. Documentation of completion of continuing education approved by the Accreditation Council for Continuing Medical Education (ACCME); the American Osteopathic Association (AOA) or the American Academy of Physician Assistants (AAPA)~~

~~90-005.05D The Department/Board will review the submitted documentation to determine if the credential holder has met the requirements for continuing competency activities for renewal of the credential. Only documented activities/hours that meet the continuing competency requirements will be counted toward the total requirements for renewal.~~

~~90-005.05E The Department/Board will notify the credential holder upon satisfactory completion of the audit.~~

~~90-005.05F The credential of any person who fails to comply with the conditions of the audit will expire 30 days after notice and an opportunity for a hearing.~~

~~90-005.05G The Board reserves the right to audit continuing competency~~

~~requirements of any credential holder by notifying the credential holder and requesting that s/he produce the required documentation of attendance at or participation in acceptable continuing competency programs within 30 days of mailing.~~

~~90-005.06 Department Review: The Department will act within 150 days upon all completed applications for renewal.~~

~~90-005.06A False Information: The Department may refuse to renew a credential for falsification of any information submitted for renewal of a credential. The refusal will be made according to 184 NAC 1, the Department's Rules of Practice and Procedure for Administrative Hearings.~~

~~90-005.07 Address Information: Each credential holder must notify the Department of any change to the address of record.~~

~~90-005.08 Expiration of A Credential: A credential expires if a credential holder fails to:~~

- ~~1. Notify the Department that s/he wants to place his/her credential on inactive status upon its expiration;~~
- ~~2. Meet the requirements for renewal on or before the date of expiration of his/her credential; or~~
- ~~3. Otherwise fails to renew his/her credential.~~

~~90-005.08A Failure to Renew: A credential automatically expires without further notice and no opportunity for hearing if a credential holder fails by the expiration date of the credential to either:~~

- ~~1. Submit documentation of continuing competency; and/or~~
- ~~2. Pay the required renewal fee.~~

~~90-005.08B Failure to Meet Continuing Competency Requirements: The Department will refuse to renew a credential, after notice and opportunity for hearing, if a credential holder fails to meet the continuing competency requirements for renewal by the expiration date of the credential.~~

~~90-005.08C Right to Practice: When an individual's credential expires, the right to represent him/herself as a credential holder and to practice as a physician assistant terminates.~~

~~90-005.05D Practice After Expiration: An individual who practices after expiration of his/her credential is subject to assessment of an administrative penalty under 172 NAC 90-011 or such other action as provided in the statutes and regulations governing the credential.~~

~~90-005.08E Reinstatement of an Expired Credential: If a credential holder wants to resume practice as a physician assistant after failing to renew his/her credential by the expiration date, s/he must apply to the Department for reinstatement as specified in 172 NAC 90-010.~~

~~90-005.09 Inactive Status: When an individual wants to have his/her credential placed on inactive status, s/he must notify the Department in writing. There is no fee to have a credential placed on inactive status and continuing competency is not required.~~

~~90-005.06A Request for Inactive Status: When the Department has received notification that an individual wants to have his/her credential placed on inactive status, the Department will notify the credential holder in writing of the acceptance or denial of the request.~~

~~90-005.06B Placement on Inactive Status: When an individual's credential is placed on inactive status, the credential holder must not engage in practice as a physician assistant, but may represent him/herself as having an inactive credential.~~

~~90-005.06C Return to Active Status: A credential may remain on inactive status for an indefinite period of time. An individual who wants to have his/her credential returned to active status must apply to the Department for reinstatement and meet the requirements specified in 172 NAC 90-010.~~

~~90-006 REQUIREMENTS FOR SUPERVISION OF PHYSICIAN ASSISTANTS~~ Kept in section
006 as modified

~~90-006.01~~ A supervising physician must:

- ~~1.~~ Be licensed to practice medicine and surgery under the Uniform Credentialing Act;
- ~~2.~~ Have no restriction imposed by the Board on his/her ability to supervise a physician assistant;
- ~~3.~~ Maintain an agreement with the physician assistant pursuant to 172 NAC 90-006.01A. Kept in section 006 as modified

~~90-006.01A~~ An agreement between the supervising physician and a physician assistant must: Kept in section 006 as modified

- ~~1.~~ Provide that the supervising physician will exercise supervision over the physician assistant pursuant to the Medicine and Surgery Practice Act and these regulations;
- ~~2.~~ Define the scope of practice of the physician assistant, including physician assistant prescribing authority as referred to in 172 NAC 90-006.02A; Kept in section 006 as modified
- ~~3.~~ Provide that the supervising physician will retain professional and legal responsibility for medical services rendered by the physician assistant pursuant to such agreement; and
- ~~4.~~ Be signed by the supervising physician and the physician assistant.

~~90-006.01B~~ The supervising physician must:

- ~~1.~~ Keep the agreement on file at his/her primary practice site;
- ~~2.~~ Keep a copy of the agreement on file at each practice site where the physician assistant provides medical services; and
- ~~3.~~ Make the agreement available to the Board and the Department upon request.

~~90-006.01C~~ 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.

~~90-006.01D~~ Each physician assistant and his/her supervising physician shall be responsible to ensure that:

- ~~1.~~ The scope of practice of the physician assistant is identified;
- ~~2.~~ The delegation of medical tasks is appropriate to the level of competence of the physician assistant;

- ~~3. The relationship of and access to the supervising physician is defined; and~~
- ~~4. A process for evaluation of the performance of the physician assistant is established;~~

~~90-006.01E No more than four physician assistants can provide medical services under the supervision of the same physician at any one time. The Board may waive this requirement if the supervising physician shows good cause based on, but not limited to:~~ Kept in section 006 as modified

- ~~1. Group practices;~~
- ~~2. Temporary loss of a supervising physician;~~
- ~~3. General level of patient problem complexity; and~~ Kept in section 006 as modified
- ~~4. Practicing in facilities that serve state or federally designated shortage areas or underserved areas.~~

~~90-006.02 A physician assistant may perform medical services that:~~

- ~~1. Are delegated by and provided under the supervision of a licensed physician;~~
- ~~2. Are appropriate to the level of competence of the physician assistant;~~
- ~~3. Form a component of the supervising physician's scope of practice, and~~
- ~~4. Are not otherwise prohibited by law.~~

~~90-006.02A A physician assistant may prescribe drugs and devices as delegated to do so by a supervising physician. Any limitation placed by the supervising physician on the prescribing authority of the physician assistant shall be recorded on the physician assistant's scope of practice agreement.~~ Kept in section 006 as modified

~~90-006.03 All prescriptions and prescription container labels shall bear the name of the physician assistant, and if required for purposes of reimbursement, the name of the supervising physician.~~

~~90-006.04 A physician assistant shall be considered an agent of his/her supervising physician in the performance of practice-related activities delegated by the supervising physician, including, but not limited to, ordering diagnostic, therapeutic, and other medical services.~~

~~90-006.05 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 and are delegated by his/her supervising physician, and are not otherwise prohibited by law.~~

~~90-006.06 In order for a physician assistant to practice in a hospital:~~

- ~~1. His/her supervising physician shall be a member of the medical staff of the hospital;~~
- ~~2. The physician assistant shall be approved by the governing board of the hospital; and~~
- ~~3. The physician assistant will comply with applicable hospital policies, including but not limited to, reasonable requirements that the physician assistant and the supervising physician maintain professional liability insurance with such coverage and limits as established by the governing board of the hospital.~~

~~90-006.07~~ For physician assistants with less than two years' experience, the following minimum requirements for the personal presence of the supervising physician must be met:

- ~~1. A physician assistant with a temporary license shall practice only when the supervising physician is actually present at the practice site.~~
- ~~2. A physician assistant that has held a permanent license for less than three months must have the supervising physician physically present a minimum of 20% of the time when the physician assistant is providing medical services.~~
- ~~3. A physician assistant that has held a permanent license for more than three months must have the supervising physician physically present a minimum of 10% of the time when the physician assistant is providing medical services.~~
- ~~4. The time the supervising physician and the physician assistant with a permanent license are together may be less than 10% if the supervising physician shows good cause and is approved by the Board. In determining good cause, factors to consider include but are not limited to:~~
 - ~~a. The proposed practice site;~~
 - ~~b. The percentage of time together;~~
 - ~~c. The experience of the physician assistant;~~
 - ~~d. The experience the supervising physician has had supervising physician assistants;~~
 - ~~e. Any previous knowledge the supervising physician has had with the physician assistant's patient care in the community;~~
 - ~~f. If the site is designated as a state or federal shortage or underserved area; and/or~~
 - ~~g. The general level of patient problem complexity. Kept in section 006 as modified~~

~~90-006.08~~ A physician assistant may render medical services in a setting geographically remote from the supervising physician, except that a physician assistant with less than two years of experience shall comply with the following standards of supervision:

- ~~1. The physician assistant must hold a permanent license;~~
- ~~2. The supervising physician shall review a minimum of 20 patient medical records per month, of which represents a sample of the patient care the physician~~

assistant has provided. If the physician assistant has provided patient care to fewer than 20 patients per month, the supervising physician shall review 100% of the patient medical records.

~~90-006.08A~~ The Board may consider an application for waiving the standards of supervision and may waive the standards upon showing of good cause by the supervising physician. In determining good cause, the factors to include but are not limited to:

- ~~1. The type of practice setting;~~
- ~~2. The experience of the physician assistant;~~
- ~~3. The experience the supervising physician has had with physician assistants; and~~
- ~~4. The general level of patient problem complexity.~~ Kept in section 006 as modified

~~90-007 LIABILITY FOR THE NEGLIGENCE OF THE PHYSICIAN ASSISTANT:~~ Any physician or physician group of physicians utilizing a physician assistant is liable for any negligent acts or omissions of the physician assistant while acting under their supervision and control.

~~90-008 DISCIPLINARY ACTIONS~~

~~90-008.01 Grounds for Action Against a Credential:~~ A credential to practice a profession may have disciplinary actions taken against it on any of the following grounds:

- ~~1. Misrepresentation of material facts in procuring or attempting to procure a credential;~~
- ~~2. Immoral or dishonorable conduct evidencing unfitness to practice the profession in this state;~~
- ~~3. Abuse of, dependence on, or active addiction to alcohol, any controlled substance, or any mind-altering substance;~~
- ~~4. Failure to comply with a treatment program or an aftercare program, including, but not limited to, a program entered into under the Licensee Assistance Program established pursuant to Neb. Rev. Stat. § 38-175;~~
- ~~5. Conviction of:
 - ~~a. A misdemeanor or felony under Nebraska law or federal law, or~~
 - ~~b. A crime in any jurisdiction which, if committed within this state, would have constituted a misdemeanor or felony under Nebraska law and which has a rational connection with the fitness or capacity of the applicant or credential holder to practice the profession;~~~~
- ~~6. Practice of the profession:
 - ~~a. Fraudulently,~~~~

- b. ~~Beyond its authorized scope,~~
- c. ~~With gross incompetence or gross negligence, or~~
- d. ~~In a pattern of incompetent or negligent conduct;~~
- 7. ~~Practice of the profession while the ability to practice is impaired by alcohol, controlled substances, drugs, mind-altering substances, physical disability, mental disability, or emotional disability;~~
- 8. ~~Physical or mental incapacity to practice the profession as evidenced by a legal judgment or a determination by other lawful means;~~
- 9. ~~Illness, deterioration, or disability that impairs the ability to practice the profession;~~
- 10. ~~Permitting, aiding, or abetting the practice of a profession or the performance of activities requiring a credential by a person not credentialed to do so;~~
- 11. ~~Having had his/her credential denied, refused renewal, limited, suspended, revoked, or disciplined in any manner similar to 172 NAC 90-008.05 by another state or jurisdiction based upon acts by the applicant or credential holder similar to acts described in this part;~~
- 12. ~~Use of untruthful, deceptive, or misleading statements in advertisements;~~
- 13. ~~Conviction of fraudulent or misleading advertising or conviction of a violation of the Uniform Deceptive Trade Practices Act;~~
- 14. ~~Distribution of intoxicating liquors, controlled substances, or drugs for any other than lawful purposes;~~
- 15. ~~Violations of the Uniform Credentialing Act or the rules and regulations relating to the particular profession;~~
- 16. ~~Unlawful invasion of the field of practice of any profession regulated by the Uniform Credentialing Act which the credential holder is not credentialed to practice;~~
- 17. ~~Violation of the Uniform Controlled Substances Act or any rules and regulations adopted pursuant to the act;~~
- 18. ~~Failure to file a report required by Neb. Rev. Stat. §§ 38-1,124 or 38-1,125;~~
- 19. ~~Failure to maintain the requirements necessary to obtain a credential;~~
- 20. ~~Violation of an order issued by the Department;~~
- 21. ~~Violation of an assurance of compliance entered into under Neb. Rev. Stat. § 38-1,108;~~
- 22. ~~Failure to pay an administrative penalty;~~
- 23. ~~Unprofessional conduct as defined in 172 NAC 90-008.02; or~~
- 24. ~~Violation of the Automated Medication Systems Act.~~

90-008.02 Unprofessional Conduct: Unprofessional conduct means any departure from or failure to conform to the standards of acceptable and prevailing practice of a profession or the ethics of the profession, regardless of whether a person, consumer, or entity is injured, but does not include a single act of ordinary negligence. Unprofessional conduct also means conduct that is likely to deceive or defraud the public or is detrimental to the public interest. Unprofessional conduct includes but is not limited to: **Moved to section**

007 as modified

1. ~~Receipt of fees on the assurance that an incurable disease can be permanently cured;~~
2. ~~Division of fees, or agreeing to split or divide the fees, received for professional services with any person for bringing or referring a consumer other than:
 - a. ~~With a partner or employee of the applicant or credential holder or his/her office or clinic;~~
 - b. ~~With a landlord of the applicant or credential holder pursuant to a written agreement that provides for payment of rent based on gross receipts; or~~
 - c. ~~With a former partner or employee of the applicant or credential holder based on a retirement plan or separation agreement.~~~~
3. ~~Obtaining any fee for professional services by fraud, deceit, or misrepresentation, including, but not limited to, falsification of third-party claim documents;~~
4. ~~Cheating on or attempting to subvert the credentialing examination;~~
5. ~~Assisting in the care or treatment of a consumer without the consent of the consumer or his/her legal representative;~~
6. ~~Use of any letters, words, or terms, either as a prefix, affix, or suffix, on stationery, in advertisements, or otherwise, indicating that the person is entitled to practice a profession for which s/he is not credentialed;~~
7. ~~Performing, procuring, or aiding and abetting in the performance or procurement of a criminal abortion;~~
8. ~~Knowingly disclosing confidential information except as otherwise permitted by law;~~
9. ~~Commission of any act of sexual abuse, misconduct, or exploitation related to the practice of the profession of the applicant or credential holder; Moved to 172 NAC 88 section 009 as modified~~
10. ~~Failure to keep and maintain adequate records of treatment or service; Moved to 172 NAC 88 section 009 as modified~~
11. ~~Prescribing, administering, distributing, dispensing, giving, or selling any controlled substance or other drug recognized as addictive or dangerous for other than a medically accepted therapeutic purpose; Moved to 172 NAC 88 section 009 as modified~~
12. ~~Prescribing any controlled substance to:
 - a. ~~Oneself or~~
 - b. ~~Except in the case of a medical emergency;
 - (1) ~~One's spouse;~~
 - (2) ~~One's child;~~
 - (3) ~~One's parent;~~
 - (4) ~~One's sibling; or~~
 - (5) ~~Any other person living in the same household as the~~~~~~

prescriber;

13. Failure to comply with any federal, state, or municipal law, ordinance, rule, or regulation that pertains to the applicable profession;
14. Disruptive behavior, whether verbal or physical, which interferes with consumer care or could reasonably be expected to interfere with the care; Moved to 172 NAC 88 section 009 as modified
15. Purchasing or receiving any prescription drug from any source in violation of the Wholesale Drug Distributor Licensing Act;
16. Practice as a physician assistant while his/her credential is suspended or in contravention of any limitation placed upon his/her credential;
17. Physical or mental illness or physical or mental deterioration or disability which would render the applicant or credential holder unqualified to practice his/her profession or occupation;
18. Refusal to submit to a physical or mental examination request by the Board, pursuant to Neb. Rev. Stat. §§ 38-1,110 to 38-1,113 to determine his/her qualifications to practice or to continue in the practice of the profession or occupation for which application was made or for which s/he is credentialed;
19. Failure to comply with Neb. Rev. Stat. §§ 71-603.01, 71-604, 71-605, or 71-606 relating to the signing of birth and death certificates; Moved to 172 NAC 88 section 009 as modified
20. Refusal to cooperate or failure to furnish requested information during a licensing or discipline investigation by the Department; and Moved to 172 NAC 88 section 009 as modified
21. Providing treatment or consultation recommendations, including issuing a prescription, via electronic or other means, unless the physician has obtained a history and physical evaluation of the patient adequate to establish diagnosis and identify underlying conditions and/or contraindications to the treatment recommended/provided and that arrangements exist to insure availability of the physician or physician coverage for follow-up patient care. Moved to 172 NAC 88 section 009 as modified

90-008.03 Temporary Suspension or Limitation

90-008.03A The Department may temporarily suspend or temporarily limit any credential issued by the Department without notice or a hearing if the Director determines that there is reasonable cause to believe that grounds exist under 172 NAC 90-008.01 for the revocation, suspension, or limitation of the credential and that the credential holder's continuation in practice or operation would constitute an imminent danger to the public health and safety. Simultaneously with the action, the Department will institute proceedings for a hearing on the grounds for revocation, suspension, or limitation of the credential. The hearing will be held no later than 15 days from the date of the temporary suspension or temporary

~~limitation of the credential.~~

~~90-008.03B A continuance of the hearing will be granted by the Department upon the written request of the credential holder, and the continuance must not exceed 30 days unless waived by the credential holder. A temporary suspension or temporary limitation order by the Director will take effect when served upon the credential holder.~~

~~90-008.03C A temporary suspension or temporary limitation of a credential under 172 NAC 90-008.03 will not be in effect for more than 90 days unless waived by the credential holder. If a decision is not reached within 90 days, the credential will be reinstated unless and until the Department reaches a decision to revoke, suspend, or limit the credential or otherwise discipline the credential holder.~~

~~90-008.04 Department Action: The Department will follow the procedures delineated in the Uniform Credentialing Act to notify credential holders of any disciplinary action to be imposed and the time and place of the hearing.~~

~~90-008.05 Sanctions: Upon the completion of any hearing held regarding discipline of a credential, the Director may dismiss the action or impose the following sanctions:~~

- ~~1. Censure;~~
- ~~2. Probation;~~
- ~~3. Limitation;~~
- ~~4. Civil Penalty;~~
- ~~5. Suspension; or~~
- ~~6. Revocation.~~

~~90-008.05A Additional Terms and Conditions of Discipline: If any discipline is imposed pursuant to 172 NAC 90-008.05, the Director may, in addition to any other terms and conditions of that discipline:~~

- ~~1. Require the credential holder to obtain additional professional training and to pass an examination upon the completion of the training. The examination may be written or oral or both and may be a practical or clinical examination or both or any or all of the combinations of written, oral, practical, and clinical, at the option of the Director;~~
- ~~2. Require the credential holder to submit to a complete diagnostic examination by one or more physicians or other qualified professionals appointed by the Director. If the Director requires the credential holder to submit to an examination, the Director will receive and consider any other report of a complete diagnostic examination given by one or more physicians or other qualified~~

- professionals of the credential holder's choice if the credential holder chooses to make available the report or reports by his/her physician or physicians or other qualified professionals; and
3. Limit the extent, scope, or type of practice of the credential holder.

~~90-009 VOLUNTARY SURRENDER OR LIMITATION:~~ A physician assistant may offer to voluntarily surrender or limit a credential issued by the Department. The credential holder must make the offer in writing on a form provided by the Department or constructed by the credential holder, which must include the following information:

1. Personal Information:
 - a. First, middle and last name;
 - b. Mailing address (street, rural route, or post office address), city, state, and zip code;
 - c. Telephone number; and
 - d. Fax number.
2. Information Regarding the Credential Being Offered for Surrender or Limitation:
 - a. List credential(s) and credential number(s) that would be surrendered or limited;
 - b. Indicate the desired time frame for offered surrender or limitation:
 - (1) Permanently;
 - (2) Indefinitely; or
 - (3) Definite period of time (specify);
 - c. Specify reason for offered surrender or limit of credential; and
 - d. Specify any terms and conditions that the credential holder wishes to have the Department consider and apply to the offer.
3. Attestation: The credential holder must:
 - a. Attest that all the information on the offer is true and complete; and
 - b. Provide the credential holder's signature and date.

~~90-009.01~~ The Department may accept an offer of voluntary surrender or limitation of a credential based on:

1. An offer made by the credential holder on his/her own volition;
2. An offer made with the agreement of the Attorney General or the legal counsel of the Department to resolve a pending disciplinary matter;
3. A decision by the Attorney General to negotiate a voluntary surrender or limitation in lieu of filing a petition for disciplinary action; or
4. A decision by the legal counsel of the Department to negotiate a voluntary surrender or limitation in response to a notice of disciplinary action.

~~90-009.02~~ The Department may reject an offer of voluntary surrender of a credential under circumstances which include, but are not limited to, when the credential:

1. _____ Is under investigation;
2. _____ Has a disciplinary action pending but a disposition has not been rendered;
or
3. _____ Has had a disciplinary action taken against it.

~~90-009.03~~ When the Department either accepts or rejects an offer of voluntary surrender or limitation, the Director will issue the decision in a written order. The order will be issued within 30 days after receipt of the offer of voluntary surrender or limitation and will specify:

1. _____ Whether the Department accepts or rejects the offer of voluntary surrender; and
2. _____ The terms and conditions under which the voluntary surrender is accepted or the basis for the rejection of an offer of voluntary surrender. The terms and conditions governing the acceptance of a voluntary surrender will include, but not be limited to:
 - a. _____ Duration of the surrender;
 - b. _____ Whether the credential holder may apply to have the credential reinstated; and
 - c. _____ Any terms and conditions for reinstatement.

~~90-009.04~~ A limitation may be placed on the right of the credential holder to practice a profession or operate a business to the extent, for the time, and under the conditions as imposed by the Director.

~~90-009.05~~ Violation of any of the terms and conditions of a voluntary surrender or limitation by the credential holder will be due cause for the refusal of renewal of the credential, for the suspension or revocation of the credential, or for refusal to restore the credential.

~~90-009.06~~ Reinstatement following voluntary surrender is set out in 172 NAC 90-010.

~~90-010 REINSTATEMENT:~~ This section applies to physician assistants previously credentialed in Nebraska who seek the authority to return to practice in Nebraska with a valid Nebraska credential. Individuals may apply for reinstatement as follows: **Moved to section 008 as modified**

1. _____ An individual whose credential has expired, been placed on inactive status, voluntarily surrendered for an indefinite period of time, or suspended or limited for disciplinary reasons, may apply for reinstatement at any time.
2. _____ An individual whose credential has been voluntarily surrendered for a definite period of time may apply for reinstatement after that period of time has elapsed.
3. _____ An individual whose credential has been revoked may apply for reinstatement only after a period of two years has elapsed from the date of revocation.

4. ~~An individual whose credential has been permanently voluntarily surrendered may not apply for reinstatement.~~

~~The voluntary surrender of a credential may be unrelated to disciplinary matters, or may be done to resolve a pending disciplinary matter, in lieu of disciplinary action, or in response to a notice of disciplinary action.~~

90-010.01 Reinstatement From Expired or Inactive Status or Following Voluntary Surrender Unrelated to a Disciplinary Matter

~~The applicant must submit to the Department a written application on a form provided by the Department or constructed by the applicant.~~

1. ~~Application: The applicant, on his/her application:~~
- ~~a. Must provide the following information:~~
- ~~(1) The legal name of the applicant, maiden name (if applicable), and any other names by which the applicant is known;~~
- ~~(2) Mailing address (street, rural route, or post office address; and city, state, and zip code or country information);~~
- ~~(3) The applicant's:~~
- ~~(a) Social Security Number (SSN); or~~
- ~~(b) Alien Registration Number (A#); or~~
- ~~(c) Form I-94 (Arrival-Departure Record) number.~~
- ~~Certain applicants may have both a SSN and an A# or I-94 number, and if so, must report both.~~
- ~~(4) If the applicant holds a professional credential in another state, a list of the state(s) and type of credential;~~
- ~~b. If the applicant is not a United States citizen, s/he must submit evidence of lawful admission or presence in the United States, which may include a copy of:~~
- ~~(1) A Green Card, otherwise known as a Permanent Resident Card (Form I-551), both front and back of the card;~~
- ~~(2) An unexpired foreign passport with an unexpired Temporary I-551 stamp bearing the same name as the passport;~~
- ~~(3) A document showing an Alien Registration Number ("A#"). An Employment Authorization Card/Document is not acceptable; or~~
- ~~(4) A Form I-94 (Arrival-Departure Record);~~
- ~~c. May provide the following information~~

about him/herself:

- _____ (1) Telephone number including area code;
- _____ (2) E-mail address;
- _____ (3) Fax number; and

d. Must attest that s/he:

- _____ (1) Has met the continuing competency requirements specified in 172 NAC 90-004 within the 24 months immediately preceding submission of the application;
- _____ (2) Has not practiced in Nebraska since s/he last held an active credential, or if the applicant has practiced in Nebraska since s/he last held an active credential, the actual number of days practiced;
- _____ (3) Has not committed any act which would be grounds for action against a credential as specified in 172 NAC 90-008 since the last renewal or issuance of the credential (whichever is later), or if an act(s) was committed, provide an explanation of all such acts.

e. The applicant must also provide information related to the following, as requested on the application of the Department:

- (1) History of charges, complaints, disciplinary actions, adverse actions, or other actions against a professional license or permit in any state or jurisdiction including, but not limited to:
 - (a) Voluntary surrenders or voluntary limitations;
 - (b) Currently pending investigations or complaints;
 - (c) Prior refusals to issue, refusals to renew, or denials of a license or permit;
- (2) Information relating to fitness to practice including, but not limited to:
 - (a) Addiction, dependence upon or chronic impairment by alcohol, narcotics, barbiturates, or other drugs which may cause physical and/or psychological dependence;
 - (b) Physical, mental, or emotional conditions which impair the applicant's ability to practice the profession safely and competently;
- _____ (3) History of any remedial or disciplinary actions during the applicant's physician assistant educational program or postgraduate training including, but not limited to restrictions, suspensions, terminations, request for voluntary resignation, probation, counseling, and receipt of warnings;

- ~~(4) History of adverse actions initiated or carried out related to hospital or institutional privileges including, but not limited to, involuntary adverse actions, voluntary resignations or suspensions, or withdrawals;~~
- ~~(5) Any employment disciplinary actions or non-renewal of an employment contract;~~
- ~~(6) Criminal history, including convictions and charges, complaints or other actions that did not result in convictions;~~
- ~~(7) History of adverse actions by the Federal Drug Enforcement Administration (DEA) or a state controlled substances agency including, but not limited to:
 - ~~(a) Denials of registration;~~
 - ~~(b) Calls to come before a licensing agency or other lawful authority in relation to DEA controlled substances;~~
 - ~~(c) Surrenders of a state or federal controlled substances registration;~~
 - ~~(d) Restrictions or disciplinary actions of a state or federal controlled substances registration;~~~~
- ~~(8) History of professional liability claims, adverse judgments, settlements, or awards, including any pending professional liability claims.~~

- ~~2. Fee(s): The following fee(s):~~
- ~~a. If the credential is expired or inactive, the reinstatement and renewal fees; or~~
- ~~b. If the credential was voluntarily surrendered, the renewal fee.~~

~~90-010.01A If an applicant has practiced while his/her credential was expired, inactive, or voluntarily surrendered, the Department may, with the recommendation of the Board, take one or more of the following actions:~~

- ~~1. Deny the application to reinstate the credential;~~
- ~~2. Reinstatement of the credential to active status and impose limitation(s) or other disciplinary actions on the credential; and/or~~
- ~~3. Reinstatement of the credential.~~

~~90-010.01B If an applicant has committed any other violation of the statutes and regulations governing the credential, the Department may:~~

- ~~1. Deny the application for reinstatement of the credential;~~
- ~~2. Reinstatement of the credential to active status and impose limitation(s) or other disciplinary actions on the credential; and/or~~

3. ~~Reinstate the credential.~~

~~90-010.01C~~ The Department will act within 150 days on all completed applications.

~~90-010.01D~~ The Department's decision may be appealed to the Director by any party to the decision. The appeal must be in accordance with the Administrative Procedure Act.

~~90-010.02~~ Reinstatement from Non-Disciplinary Revocation or Lapsed Status: An individual whose credential was placed on non-disciplinary revocation or lapsed status before December 1, 2008 may apply for reinstatement as provided in 172 NAC 90-010.01.

~~90-010.03~~ Reinstatement Following Suspension, Limitation, Revocation, or Voluntary Surrender to Resolve a Pending Disciplinary Matter, In Lieu of Discipline, or In Response to a Notice of Disciplinary Action: An individual whose credential was suspended or limited may apply for reinstatement at any time. An individual whose credential has been revoked may apply for reinstatement after a period of two years has elapsed from the date of revocation. An individual whose credential was voluntarily surrendered may apply for reinstatement according to the order entered by the Director.

The applicant must submit to the Board a written application on a form provided by the Department or constructed by the applicant.

1. ~~Application: The applicant, on his/her application:—~~
 - a. ~~Must provide the following information:~~
 - ~~(1) The legal name of the applicant, maiden name (if applicable), and any other names by which the applicant is known;~~
 - ~~(2) Mailing address (street, rural route, or post office address, and city, state, and zip code or country information);~~
 - ~~(3) The applicant's:~~
 - ~~(a) Social Security Number (SSN);~~
 - ~~(b) Alien Registration Number (A#); or~~
 - ~~(c) Form I-94 (Arrival-Departure Record) number.~~~~Certain applicants may have both a SSN and an A# or I-94 number, and if so, must report both.~~
 - ~~(4) If the applicant holds a professional credential in another state, a list of the state(s) and type of credential;~~
 - ~~(5) A statement of the reason the applicant believes his/her credential should be reinstated;~~
 - b. ~~If the applicant is not a United States citizen, s/he must submit evidence of lawful admission or presence in the United States,~~

which may include a copy of:

- ~~(1) A Green Card, otherwise known as a Permanent Resident Card (Form I-551), both front and back of the card;~~
- ~~(2) An unexpired foreign passport with an unexpired Temporary I-551 stamp bearing the same name as the passport;~~
- ~~(3) A document showing an Alien Registration Number ("A#"). An Employment Authorization Card/Document is not acceptable; or~~
- ~~(4) A Form I-94 (Arrival-Departure Record);~~
- ~~c. May provide the following information about him/herself:~~
 - ~~(1) Telephone number including area code;~~
 - ~~(2) E-mail address; and~~
 - ~~(3) Fax number.~~
- ~~d. The applicant must also provide information related to the following, as requested on the application of the Department:~~
 - ~~(1) History of charges, complaints, disciplinary actions, adverse actions, or other actions against a professional license or permit in any state or jurisdiction including, but not limited to:
 - ~~(a) Voluntary surrenders or voluntary limitations;~~
 - ~~(b) Currently pending investigations or complaints;~~
 - ~~(c) Prior refusals to issue, refusals to renew, or denials of a license or permit;~~~~
 - ~~(2) Information relating to fitness to practice including, but not limited to:
 - ~~(a) Addiction, dependence upon or chronic impairment by alcohol, narcotics, barbiturates, or other drugs which may cause physical and/or psychological dependence;~~
 - ~~(b) Physical, mental, or emotional conditions which impair the applicant's ability to practice the profession safely and competently;~~~~
 - ~~(3) History of any remedial or disciplinary actions during the applicant's physician assistant educational program or postgraduate training including, but not limited to restrictions, suspensions, terminations, request for voluntary resignation, probation, counseling, and receipt of warnings;~~
 - ~~(4) History of adverse actions initiated or carried out related to hospital or institutional privileges including, but not limited to, involuntary adverse actions, voluntary resignations or suspensions, or withdrawals;~~
 - ~~(5) Any employment disciplinary actions or non-renewal of an~~

employment contract;

- ~~(6) Criminal history, including convictions and charges, complaints or other actions that did not result in convictions;~~
- ~~(7) History of adverse actions by the Federal Drug Enforcement Administration (DEA) or a state controlled substances agency including, but not limited to:
 - ~~(a) Denials of registration;~~
 - ~~(b) Calls to come before a licensing agency or other lawful authority in relation to DEA controlled substances;~~
 - ~~(c) Surrenders of a state or federal controlled substances registration;~~
 - ~~(d) Restrictions or disciplinary actions of a state or federal controlled substances registration;~~~~
- ~~(8) History of professional liability claims, adverse judgments, settlements, or awards, including any pending professional liability claims.~~

~~2. Fee: The renewal fee.~~

~~90-010.03A The Board will make a recommendation regarding reinstatement following suspension, limitation, revocation, or voluntary surrender within 180 days of receipt of the application.~~

~~90-010.03B The Department, with the recommendation of the Board, may:~~

- ~~1. Conduct an investigation to determine if the applicant has committed acts or offenses prohibited by Neb. Rev. Stat. § 38-178;~~
- ~~2. Require the applicant to submit to a complete diagnostic examination, at the expense of the applicant, by one or more physician(s) or other professionals appointed by the Board. The applicant may also consult a physician(s) or other professionals of his/her own choice for a complete diagnostic examination and make available a report(s) of the examination(s) to the Department and to the Board;~~
- ~~3. Require the applicant to pass a written, oral, or practical examination or any combination of examinations at the expense of the applicant;~~
- ~~4. Require the applicant to successfully complete additional education at the expense of the applicant;~~
- ~~5. Require the applicant to successfully pass an inspection of his/her practice site; or~~
- ~~6. Take any combination of these actions.~~

~~90-010.03C~~ On the basis of the written application, materials submitted by the applicant, and the information obtained under 90-010.03B, the Board may:

- ~~1. Deny the application for reinstatement; or~~
- ~~2. Recommend to the Department:
 - ~~a. Full reinstatement of the credential;~~
 - ~~b. Modification of the suspension or limitation; or~~
 - ~~c. Reinstatement subject to limitations or subject to probation with terms and conditions.~~~~

~~If the applicant has practiced while his/her credential was suspended, limited, revoked, or voluntarily surrendered, the Department may assess an administrative penalty pursuant to 172 NAC 90-011, in which case a separate notice of opportunity for hearing will be sent to the applicant.~~

~~90-010.03D~~ An affirmative vote of a majority of the full membership of the Board as authorized by statute is required to recommend reinstatement of a credential with or without terms, conditions, or restrictions.

~~90-010.03E Full Reinstatement:~~ If the Board recommends full reinstatement of the credential, modification of the suspension or limitation, or reinstatement of the credential subject to limitations or subject to probation with terms and conditions, the Board's recommendation will be sent to the applicant by certified mail. The following information will be forwarded to the Director for a decision:

- ~~1. The written recommendation of the Board, including any finding of fact or order of the Board;~~
- ~~2. The application for reinstatement;~~
- ~~3. The record of hearing, if any; and~~
- ~~4. Any pleadings, motions, requests, preliminary or intermediate rulings and orders, and similar correspondence to or from the Board and the applicant.~~

~~90-010.03F Denial, Modification, Limitation, or Probation:~~ If the Board's initial decision is to deny the application for reinstatement, recommend modification of the suspension or limitation, or reinstate the credential subject to limitation or probation with terms and conditions, notification of the Board's decision will be mailed to the applicant by certified mail.

- ~~1. The initial decision or recommendation of the Board will become final 30 days after the decision or recommendation is mailed to the applicant unless the applicant requests a hearing within that 30-day period.
 - ~~a. If the applicant requests a hearing before the Board, the~~~~

Department will mail a notice of the date, time, and location of the hearing. The notice will be sent by certified mail at least 30 days before the hearing.

- b. Following the hearing, the Board may deny the reinstatement or recommend full reinstatement of the credential, or recommend modification of the suspension or limitation, or recommend reinstatement of the credential subject to limitations or probation with terms and conditions.
2. If the applicant has been afforded a hearing or an opportunity for a hearing on an application for reinstatement within two years before filing the current application, the Department may grant or deny the application without another hearing before the Board.

~~90-010.03G Denial Decision:~~ If the Board's final decision is denial of the application for reinstatement, the applicant will be notified by certified mail. The applicant may appeal the Board's denial to District Court in accordance with the Administrative Procedure Act.

~~90-010.03H Board Recommendation:~~ If the Board's final recommendation is full reinstatement of the credential, modification of the suspension or limitation, or reinstatement of the credential subject to limitations or probation with terms and conditions, the Board's recommendation will be sent to the applicant by certified mail. The following information will be forwarded to the Director for a decision:

1. The written recommendation of the Board, including any finding of fact or order of the Board;
2. The application for reinstatement;
3. The record of hearing, if any; and
4. Any pleadings, motions, requests, preliminary or intermediate rulings and orders, and similar correspondence to or from the Board and the applicant.

~~90-010.03I Director's Review:~~ The Director, upon receipt of the board's recommendation for full reinstatement, modification, or probation, will review the application and other documents and make a decision within 150 days of receipt of the Board's recommendation and accompanying documents. The Director will enter an order setting forth the decision. The Director may:

1. Affirm the recommendation of the Board and grant reinstatement;
or
2. Reverse or modify the recommendation if the Board's recommendation is:
 - a. In excess of statutory authority;
 - b. Made upon unlawful procedure;

- c. ~~Unsupported by competent, material, and substantial evidence in view of the entire record; or~~
- d. ~~Arbitrary or capricious.~~

~~_____ The order regarding reinstatement of the applicant's credential will be sent to the applicant by certified mail. The Director's decision may be appealed to the District Court by any party to the decision. The appeal must be in accordance with the Administrative Procedure Act.~~

~~90-011 ADMINISTRATIVE PENALTY: The Department may assess an administrative penalty when evidence exists of practice without a credential to practice a profession or operate a business. Practice without a credential for the purpose of this regulation means practice:~~

- ~~1. Prior to the issuance of a credential;~~
- ~~2. Following the expiration of a credential; or~~
- ~~3. Prior to the reinstatement of a credential.~~

~~90-011.01 Evidence of Practice: The Department will consider any of the following conditions as prima facie evidence of practice without a credential:~~

- ~~_____ 1. The person admits to engaging in practice;~~
- ~~_____ 2. Staffing records or other reports from the employer of the person indicate that the person was engaged in practice;~~
- ~~_____ 3. Billing or payment records document the provision of service, care, or treatment by the person;~~
- ~~_____ 4. Service, care, treatment records document the provision of service, care, or treatment by the person;~~
- ~~_____ 5. Appointment records indicate that the person was engaged in practice;~~
- ~~_____ 6. Other government records indicate that the person was engaged in practice; and~~
- ~~_____ 7. The person or entity opens a business or practice site and announces or advertises that the business or site is open to provide service, care, or treatment.~~

~~For purposes of this regulation prima facie evidence means a fact presumed to be true unless disproved by some evidence to the contrary.~~

~~90-011.02 Penalty: The Department may assess an administrative penalty in the amount of \$10 per day, not to exceed a total of \$1,000 for practice without a credential. To assess such penalty, the Department will:~~

- ~~1. Provide written notice of the assessment to the person. The notice will specify:
 - ~~a. The total amount of the administrative penalty;~~
 - ~~b. The evidence on which the administrative penalty is based;~~
 - ~~c. That the person may request, in writing, a hearing to contest the~~~~

assessment of an administrative penalty;

- d. ~~That the Department will within 30 days following receipt of payment of the administrative penalty, remit the penalty to the State Treasurer to be disposed of in accordance with Article VII, section 5 of the Constitution of Nebraska;~~
- e. ~~That an unpaid administrative penalty constitutes a debt to the State of Nebraska which may be collected in the manner of a lien foreclosure or sued for and recovered in a proper form of action in the name of the state in the District Court of the county in which the violator resides or owns property. The Department may also collect in such action attorney's fees and costs incurred directly in the collection of the administrative penalty;~~
and
- f. ~~Failure to pay an administrative penalty may result in disciplinary action.~~

- 2. ~~Send by certified mail, a written notice of the administrative penalty to the last known address of the person to whom the penalty is assessed.~~

~~90-011.03 Administrative Hearing: When a person contests the administrative penalty and requests a hearing, the Department will hold a hearing pursuant to the Administrative Procedure Act and 184 NAC 1, the Department's Rules of Practice and Procedure for Administrative Hearings.~~

~~90-012 FEES: Fees referred to in these regulations are set out in 172 NAC 2, unless otherwise specified.~~ Section kept in section 009