

EFFECTIVE
06/16/2020

NEBRASKA DEPARTMENT OF
HEALTH AND HUMAN SERVICES

172 NAC 88

TITLE 172 PROFESSIONAL AND OCCUPATIONAL LICENSURE

CHAPTER 88 LICENSURE OF MEDICINE AND SURGERY AND OSTEOPATHIC
MEDICINE AND SURGERY

001. SCOPE AND AUTHORITY. These regulations govern the licensure of medicine and surgery under Nebraska Revised Statute (Neb. Rev. Stat.) §§ 38-2001 to 38-2063 of the Medicine and Surgery Practice Act, the Interstate Medical Licensure Compact (IMLC), and the Uniform Credentialing Act (UCA).

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

002.01 ACCREDITED SCHOOL OR COLLEGE OF MEDICINE. An accredited school or college of medicine is a United States or Canadian school or college which conforms to the standards required for accreditation by the Liaison Committee on Medical Education (LCME) sponsored by the Association of American Medical Colleges and the American Medical Association and is approved by the Department, upon recommendation of the Board.

002.02 ACCREDITED SCHOOL OR COLLEGE OF OSTEOPATHIC MEDICINE. An accredited school or college of osteopathic medicine is a school or college which conforms to the standards required for accreditation by the American Osteopathic Association Bureau of Professional Education and is approved by the Department, upon recommendation of the Board.

002.03 APPROVED GRADUATE MEDICAL EDUCATION. An approved graduate medical education is a program of graduate medical education, approved by the Board, that is accredited by the Accreditation Council for Graduate Medical Education (ACGME), the Royal College of Physicians and Surgeons of Canada, the College of Family Physicians of Canada, or has been deemed by the Board as comparable to the requirements of the Accreditation Council for Graduate Medical Education (ACGME).

002.04 APPROVED GRADUATE OSTEOPATHIC MEDICAL EDUCATION. An approved graduate osteopathic medical education is a program of graduate medical education approved by the Council on Postdoctoral Training (COPT) served in the United States, or has been deemed by the Board as comparable to the requirements of the Council on Postdoctoral Training (COPT).

002.05 COMPREHENSIVE OSTEOPATHIC MEDICAL LICENSING EXAMINATION OF THE UNITED STATES (COMLEX). The comprehensive osteopathic licensing examination of the

United States is the examination made available by the National Board of Osteopathic Medical Examiners (NBOME).

002.06 FEDERATION CREDENTIALS VERIFICATION SERVICE (FCVS). The federation credentials verification service is the permanent, central repository of core credential documents that have been verified through primary sources administered by the Federation of State Medical Boards.

002.07 FEDERATION LICENSING EXAMINATION (FLEX) WEIGHTED AVERAGE. The federation licensing examination weighted average is the formula used to determine the examination score for the Federation Licensing Examination (FLEX) administered prior to 1985. Such formula is as follows: day 1 score multiplied by 1; day 2 score multiplied by 2; day 3 score multiplied by 3. The total of these 3 scores is divided by 6 which equals the Federation Licensing Examination (FLEX) Weighted Average.

002.08 FOREIGN MEDICAL GRADUATE. A foreign medical graduate is a graduate of a school or college of medicine not in the United States or Canada which is recognized by the appropriate government agency in the country where the medical school is located.

002.09 HEALTH PROFESSIONAL SHORTAGE AREA. A health professional shortage area is a geographic area designated a health profession shortage area by the Nebraska Rural Health Advisory Commission.

002.10 SPECIAL PURPOSE EXAMINATION (SPEX). The special purpose examination is an examination made available by the Federation of State Medical Boards.

002.11 STATE EXAMINATION. A state examination is an examination administered by a state, territory of the United States, or District of Columbia for purposes of determining eligibility for initial licensure of physicians or osteopathic physicians and surgeons.

003. LICENSE REQUIREMENTS FOR PHYSICIANS AND OSTEOPATHIC PHYSICIANS. 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 of Neb. Rev. Stat. §§ 38-2026 to 38-2028 for physicians, 38-2031 to 38-2033 for osteopathic physicians, 38-2034 to 38-2035, 38-131, 172 NAC 10, and this chapter.

003.01 EXAMINATION. Applicants must have score reports sent to the Department directly from the examining body.

- (1) The Federation Licensing Examination (FLEX);
- (2) The National Board of Medical Examiners (NBME);
- (3) The United States Medical Licensing Examination (USMLE);
- (4) The National Board of Osteopathic Medical Examiners (NBOME);
- (5) The Comprehensive Osteopathic Medical Licensure Examination of the United States (COMLEX);
- (6) The Licentiate of the Medical Council of Canada (LMCC); and,
- (7) Any of the following combinations of examinations:
 - (i) Any 3-sequence examination combination of parts 1, 2 and 3 of the United States

Medical Licensing Examination (USMLE), National Board of Medical Examiners (NBME), National Board of Osteopathic Medical Examiners (NBOME), or Comprehensive Osteopathic Medical Licensure Examination of the United States (COMLEX).

- (ii) Federation Licensing Examination (FLEX) Component 1 can be combined with National Board of Medical Examiners (NBME) Part III, United States Medical Licensing Examination (USMLE) Step 3, National Board of Osteopathic Medical Examiners (NBOME) Part III or Comprehensive Osteopathic Medical Licensure Examination of the United States (COMLEX) Level 3.
- (iii) Federation Licensing Examination (FLEX) Component 2 can be combined with National Board of Medical Examiners (NBME) Parts I and II, United States Medical Licensing Examination (USMLE) Steps 1 and 2, National Board of Osteopathic Medical Examiners (NBOME) Parts I and II or Comprehensive Osteopathic Medical Licensure Examination of the United States (COMLEX) Levels 1 and 2.

003.01(A) FEDERATION LICENSING EXAMINATION. If a Federation Licensing Examination (FLEX) is taken, a Federation Licensing Examination (FLEX) weighted average of 75 must be attained if examined prior to January 1, 1985. A grade of 75 is required in each component administered after January 1, 1985.

003.01(B) OPTIONAL DOCUMENTS. A completed profile from the Federation Credentials Verification Service may be submitted. The profile will be reviewed to determine if its components meet the documentation requirements for evidence of age, education, graduate medical education, examination, and equivalency, if applicable.

004. LICENSE REQUIREMENTS FOR RECIPROCITY THROUGH THE INTERSTATE MEDICAL LICENSURE COMPACT. Any applicant wishing to license through the compact must meet the requirements set out in Neb. Rev. Stat. §§ 38-3604 to 38-3608.

005. LICENSE REQUIREMENTS FOR TEMPORARY LICENSES. To obtain a permit, an individual must submit a complete application provided by the Department and provide documentation demonstrating that the applicant meets the requirements of Neb. Rev. Stat. §§ 38-2036, 38-2038 to 38-2045, 38-129.01 and this chapter.

006. LICENSE REQUIREMENTS FOR LOCUM TENENS. The locum tenens may be issued by the Department based on criteria in Neb. Rev. Stat. 38-2036, and this chapter.

006.01 LOCUM TENENS CRITERIA. Circumstances for which a physician locum tenens permit may be issued include:

- (A) The unavailability of a Nebraska physician due to vacation, sickness, hospitalization or other similar leaves of absence;
- (B) A public health emergency in the State of Nebraska such as one arising from incidents of widespread disease, natural or manmade disaster or similar causes; or
- (C) There is a need for a physician as requested by an accredited hospital in a health professional shortage area.

007. RENEWAL, WAIVER OF CONTINUING EDUCATION, AND INACTIVE STATUS. The applicant must meet the requirements set out in 172 NAC 10. All physician and osteopathic physician licenses expire on October 1 of each even-numbered year. All temporary educational permits and visiting faculty permits expire on July 1 of each year.

008. CONTINUING COMPETENCY REQUIREMENTS. On or before the expiration date, individuals holding an active license in the State of Nebraska must complete required continuing competency for their specified profession.

008.01 REQUIREMENTS FOR PHYSICIANS AND OSTEOPATHIC PHYSICIANS. On or before the credential expiration date, individuals licensed to practice medicine and surgery and osteopathic medicine and surgery must earn one of the following:

- (A) 50 hours of Category 1 continuing education approved as follows:
 - (i) Approved by the Accreditation Council for Continuing Medical Education (ACCME) or the American Osteopathic Association (AOA);
 - (ii) 1 year of participation in an approved graduate medical education program is approved as 50 hours of Category 1 continuing education; and
 - (iii) Hours are to be earned within the 24 months immediately preceding the date of expiration, except that a licensee who has earned more than the 50 hours required for license renewal for a 24-month renewal period is allowed to carry over up to 25 hours to the next 24-month renewal period; or
- (B) The American Medical Association's Physician's Recognition Award or the American Osteopathic Association Continuing Medical Education Certification earned within the 24 months immediately preceding the date of expiration.

008.02 REQUIREMENTS FOR TEMPORARY PERMIT HOLDERS. On or before the expiration date, holders of temporary educational permits and visiting faculty permits must earn one of the following:

- (A) 25 hours of Category 1 continuing education approved as follows:
 - (i) Approved by the Accreditation Council for Continuing Medical Education (ACCME) or the American Osteopathic Association (AOA);
 - (ii) 1 year of participation in an approved graduate medical education program is approved as 50 hours of Category 1 continuing education; and
 - (iii) Hours are to be earned within the 12 months immediately preceding the date of expiration; or
- (B) The American Medical Association's Physician's Recognition Award or the American Osteopathic Association Continuing Medical Education Certification earned within the 12 months immediately preceding the date of expiration.

009. UNPROFESSIONAL CONDUCT. Unprofessional conduct is set out in Neb. Rev. Stat. § 38-179, 38-2021, 38-2062(1), and this chapter.

- (A) Commission of any act of sexual abuse, misconduct, or exploitation related to the practice of the profession of the applicant or credential holder. Sexual misconduct in the practice of medicine means violation of the physician-patient relationship through which the physician uses said relationship to induce or attempt to induce the patient to engage, or to engage or attempt to engage the patient, in sexual activity; committing any act which may reasonably be interpreted as intended for the sexual arousal or gratification of the

- practitioner, the patient, or both;
- (B) Failure to keep and maintain adequate records of treatment or service. Adequate records means legible medical records containing, at a minimum, sufficient information to identify the patient, support the diagnosis, justify the treatment, accurately document the results, indicate advice and cautionary warnings provided to the patient and provide sufficient information for another practitioner to assume continuity of the patient's care at any point in the course of treatment, and, when investigative or unproven therapies are utilized, the records must include written informed patient consent;
 - (C) Disruptive physician behavior as manifested by a physician's aberrant behavior which interferes with patient care or could reasonably be expected to interfere with patient care, including, but not limited to, the following:
 - (i) Outbursts of rage or violent behavior;
 - (ii) Repeated failure to respond to calls;
 - (iii) Throwing instruments, charts, or other objects;
 - (iv) Making insulting comments to a patient, patient's family, physicians, or healthcare staff;
 - (v) Striking or assaulting a patient, patient's family, physicians, or healthcare staff; and
 - (vi) Poor hygiene;
 - (D) A departure from or failure to conform to the ethics of the medical profession, found in the "Principles of Medical Ethics" as revised on June 2001 and as published by the American Medical Association;
 - (E) Refusal of applicants or credential holders to cooperate or failure to furnish requested information during any investigation by the Department;
 - (F) 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 contraindications to the treatment recommended or provided and that arrangements exist to insure availability of the physician or physician coverage for follow-up patient care;
 - (G) Practicing medicine under a false or assumed name;
 - (H) Allowing another person or organization to use his or her license to practice medicine;
 - (I) Except as otherwise permitted by law, prescribing, selling, administering, distributing, ordering, or giving to an addict or any person previously drug dependent, any drug legally classified as a controlled substance;
 - (J) Failure to transfer pertinent and necessary medical records to another physician in a timely fashion when requested to do so by the patient or by a designated representative of the patient;
 - (K) Use of any therapy, drug or device in a manner inconsistent with the federal Food, Drug and Cosmetic Act;
 - (L) Exercising influence on the patient in such a manner as to exploit the patient for the financial gain of the licensee or of a third party, which includes, but is not limited to, the promotion or sale of services, goods, appliances, or drugs;
 - (M) Refusing to provide professional service to a person because of such person's race, creed, color, or national origin;
 - (N) Prescribing, selling, administering, or distributing, any drug legally classified as a prescription drug other than for proper medical purposes;

- (O) Prescribing, dispensing or administering Schedule II controlled substances as defined in Neb. Rev. Stat. § 28-405(a) including amphetamines and similar Schedule II sympathomimetic drugs in the treatment of exogenous obesity for a period in excess of 30 days in any 1 year, or the non-therapeutic use of injectable amphetamines;
- (P) Signing a blank, undated or predated prescription form;
- (Q) Conduct or practice outside the normal standard of care in the State of Nebraska which is or might be harmful or dangerous to the health of the patient or the public, not to include a single act of ordinary negligence;
- (R) Prescribing, dispensing or administering anabolic-androgenic steroids to a person for other than therapeutic purposes;(S) Lack of or inappropriate direction, collaboration or direct supervision of a licensed, certified or registered health care provider employed by, supervised by or assigned to the physician;
- (S) Failure to comply with Neb. Rev. Stat. §§ 71-604 to 71-606 relating to the signing of birth and death certificates; and
- (T) Refusal to undergo an examination defining competency as required by the Board.

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

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