2019

STATE OF NEBRASKA

STATUTES RELATING TO
ACUPUNCTURE
MEDICINE AND SURGERY PRACTICE ACT
NEBRASKA HOSPITAL-MEDICAL LIABILITY ACT
UNIVERSITY OF NEBRASKA

Department of Health and Human Services
Division of Public Health
Licensure Unit

301 Centennial Mall South, Third Floor
PO Box 94986
Lincoln, NE 68509-4986

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MEDICINE AND SURGERY PRACTICE ACT

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STATUTES PERTAINING TO MEDICINE AND SURGERY PRACTICE ACT

38-2001. Act, how cited.
Sections 38-2001 to 38-2062 shall be known and may be cited as the Medicine and Surgery Practice Act.
Source: Laws 2007, LB463, § 659; Laws 2009, LB394, § 1; Laws 2011, LB406, § 1; Laws 2018, LB701, § 5; Laws 2019, LB29, § 3.
Effective Date: September 1, 2019

38-2002. Definitions, where found.
For the purposes of the Medicine and Surgery Practice Act and elsewhere in the Uniform Credentialing Act, unless the context otherwise requires, the definitions found in sections 38-2003 to 38-2022 apply.
Source: Laws 1969, c. 560, § 7, p. 2283; Laws 1971, LB 150, § 4; Laws 1989, LB 342, § 17; Laws 1996, LB 1044, § 425; Laws 1999, LB 828, § 83; R.S.1943, (2003), § 71-1,107.01; Laws 2007, LB463, § 660.

38-2003. Accredited hospital, defined.
Accredited hospital means a hospital accredited by the department, with the recommendation of the board.
Source: Laws 2007, LB463, § 661.

38-2004. Accredited school or college of medicine, defined.
An accredited school or college of medicine means one approved by the board, and such school or college shall meet and maintain generally minimum standards approved by the board. Such minimum standards shall apply equally to all accredited schools, and any school to be accredited shall permit inspections by the department.
A school or college of osteopathic medicine and surgery fulfilling all such requirements shall not be refused standing as an accredited medical school because it may also specialize in giving instruction according to any special system of healing.
Source: Laws 1927, c. 167, § 103, p. 483; C.S.1929, § 71-1404; Laws 1943, c. 150, § 21, p. 549; R.S.1943, § 71-1,105; Laws 1969, c. 563, § 8, p. 2295; Laws 1989, LB 342, § 16; Laws 1996, LB 1044, § 422; Laws 1999, LB 828, § 81; R.S.1943, (2003), § 71-1,105; Laws 2007, LB463, § 662.

38-2005. Accredited school or college of osteopathic medicine, defined.
An accredited school or college of osteopathic medicine means one approved by the board. An accredited school or college of osteopathic medicine shall meet and maintain general minimum standards approved by the board. The minimum standards shall apply equally to all such accredited schools and colleges. Any school or college seeking accreditation shall permit inspections by the department.
Nothing in this section shall be construed to prohibit the department, with the recommendation of the board, from accepting accreditation of a school or college of osteopathic medicine by the American Osteopathic Association as evidence of meeting the specified requirements of this section or the equivalent thereof.
Source: Laws 1927, c. 167, § 118, p. 489; C.S.1929, § 71-1704; R.S.1943, § 71-1,140; Laws 1969, c. 565, § 4, p. 2301; Laws 1981, LB 451, § 12; Laws 1989, LB 342, § 25; Laws 1996, LB 1044, § 445; Laws 1999, LB 828, § 106; R.S.1943, (2003), § 71-1,140; Laws 2007, LB463, § 663.

38-2006. Acupuncture, defined.
Acupuncture means the insertion, manipulation, and removal of acupuncture needles and the application of manual, mechanical, thermal, electrical, and electromagnetic treatment to such needles at specific points or meridians on the human body in an effort to promote, maintain, and restore health and for the treatment of disease, based on acupuncture theory. Acupuncture may include the recommendation of therapeutic exercises, dietary guidelines, and nutritional support to promote the effectiveness of the acupuncture treatment. Acupuncture does not include manipulation or mobilization of or adjustment to the spine, extraspinal manipulation, or the practice of medical nutrition therapy.
Source: Laws 2001, LB 270, § 8; Laws 2003, LB 242, § 80; R.S.1943, (2003), § 71-1,344; Laws 2007, LB463, § 664.

38-2007. Acupuncturist, defined.
Acupuncturist means a person engaged in the practice of acupuncture.
Source: Laws 2007, LB463, § 665.
38-2008. Approved program, defined.
Approved program means a program for the education of physician assistants which is approved by the Accreditation Review Commission on Education for the Physician Assistant or its predecessor or successor agency and which the board formally approves.

Source: Laws 2007, LB463, § 666; Laws 2009, LB195, § 37.

38-2009. Repealed. Laws **2009, LB 195, § 111.**

38-2010. Board, defined.
Board means the Board of Medicine and Surgery.
Source: Laws 2007, LB463, § 668.

38-2011. Committee, defined.
Committee means the Physician Assistant Committee created in section 38-2056.
Source: Laws 2007, LB463, § 669.

38-2012. Fellowship, defined.
Fellowship means a program of supervised educational training, approved by the board, in a medical specialty or subspecialty at an accredited hospital, an accredited school or college of medicine, or an accredited school or college of osteopathic medicine, that follows the completion of undergraduate medical education.
Source: Laws 2007, LB463, § 670.

38-2013. Graduate medical education or residency, defined.
Graduate medical education or residency means a program of supervised educational training, approved by the board, in a medical specialty at an accredited hospital, an accredited school or college of medicine, or an accredited school or college of osteopathic medicine, that follows the completion of undergraduate medical education.
Source: Laws 2007, LB463, § 671.

38-2014. Physician assistant, defined.
Physician assistant means any person who graduates from an approved program, who has passed a proficiency examination, and whom the department, with the recommendation of the board, approves to perform medical services under the supervision of a physician.
Source: Laws 1973, LB 101, § 2; R.S.Supp.,1973, § 85-179.05; Laws 1985, LB 132, § 2; Laws 1993, LB 316, § 1; Laws 1996, LB 1044, § 436; Laws 1996, LB 1108, § 8; Laws 1999, LB 828, § 92; Laws 2001, LB 209, § 8; R.S.1943, (2003), § 71-1,107.16; Laws 2007, LB296, § 338; Laws 2007, LB463, § 672; Laws 2009, LB195, § 38.

38-2015. Proficiency examination, defined.
Proficiency examination means the Physician Assistant National Certifying Examination administered by the National Commission on Certification of Physician Assistants.
Source: Laws 2007, LB463, § 673; Laws 2009, LB195, § 39.

38-2016. Refresher course, defined.
Refresher course means a planned program of supervised educational training, approved by the board, that provides a review of medical knowledge and skills for the purpose of the enhancement of clinical competency.
Source: Laws 2007, LB463, § 674.

38-2017. Supervising physician, defined.
Supervising physician means a licensed physician who supervises a physician assistant.
Source: Laws 2007, LB463, § 675; Laws 2009, LB195, § 40.

38-2018. Supervision, defined.
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 shall be sufficient to show ready availability.
Source: Laws 2007, LB463, § 676; Laws 2009, LB195, § 41.

38-2019. Temporary educational permit, defined.
Temporary educational permit means a permit to practice medicine and surgery, osteopathic medicine and surgery, or any of their allied specialties in graduate medical education, a fellowship, or a refresher course.
Source: Laws 2007, LB463, § 677.

38-2020. Trainee, defined.
Trainee means any person who is currently enrolled in an approved program.
Source: Laws 2007, LB463, § 678.

38-2021. Unprofessional conduct, defined.
Unprofessional conduct means any departure from or failure to conform to the standards of acceptable and prevailing practice of medicine and surgery or the ethics of the profession, regardless of whether a person, patient, or entity is injured, or conduct that is likely to deceive or defraud the public or is detrimental to the public interest, including, but not limited to:
(1) Performance by a physician of an abortion as defined in subdivision (1) of section 28-326 under circumstances when he or she will not be available for a period of at least forty-eight hours for postoperative care unless such postoperative care is delegated to and accepted by another physician;
(2) Performing an abortion upon a minor without having satisfied the requirements of sections 71-6901 to 71-6911;
(3) The intentional and knowing performance of a partial-birth abortion as defined in subdivision (7) of section 28-326, unless such procedure is necessary to save the life of the mother whose life is endangered by a physical disorder, physical illness, or physical injury, including a life-endangering physical condition caused by or arising from the pregnancy itself; and
(4) Performance by a physician of an abortion in violation of the Pain-Capable Unborn Child Protection Act.
Source: Laws 2007, LB463, § 679; Laws 2010, LB594, § 16; Laws 2010, LB1103, § 12; Laws 2011, LB690, § 1.
Cross References

- **Pain-Capable Unborn Child Protection Act,** see section 28-3,102.

38-2022. Visiting faculty permit, defined.
Visiting faculty permit means a permit for a physician qualified by virtue of previous medical training and experience to teach students of medicine, to conduct research, or both.
Source: Laws 2007, LB463, § 680.

38-2023. Board; membership; qualifications.
The board shall consist of eight members, including at least two public members. Two of the six professional members of the board shall be officials or members of the instructional staff of an accredited medical school in this state. One of the six professional members of the board shall be a person who has a license to practice osteopathic medicine and surgery in this state.
Source: Laws 2007, LB463, § 681.

38-2024. Practice of medicine and surgery, defined.
For purposes of the Uniform Credentialing Act, and except as provided in section 38-2025 or as otherwise provided by law, the following classes of persons shall be deemed to be engaged in the practice of medicine and surgery:
(1) Persons who publicly profess to be physicians or surgeons or publicly profess to assume the duties incident to the practice of medicine, surgery, or any of their branches;
(2) Persons who prescribe and furnish medicine for some illness, disease, ailment, injury, pain, deformity, or any physical or mental condition, or treat the same by surgery;
(3) Persons holding themselves out to the public as being qualified in the diagnosis or treatment of diseases, ailments, pain, deformity, or any physical or mental condition, or injuries of human beings;
(4) Persons who suggest, recommend, or prescribe any form of treatment for the intended palliation, relief, or cure of any physical or mental ailment of any person;
(5) Persons who maintain an office for the examination or treatment of persons afflicted with ailments, diseases, injuries, pain, deformity, or any physical or mental condition of human beings;
(6) Persons who attach to their name the title of M.D., surgeon, physician, physician and surgeon, or any word or abbreviation and who indicate that they are engaged in the treatment or diagnosis of ailments, diseases, injuries, pain, deformity, infirmity, or any physical or mental condition of human beings; and
(7) Persons who are physically located in another state but who, through the use of any medium, including an electronic medium, perform for compensation any service which constitutes the healing arts that would affect the diagnosis or treatment of an individual located in this state.
Source: Laws 1927, c. 167, § 100, p. 482; C.S.1929, § 71-1401; Laws 1943, c. 150, § 18, p. 546; R.S.1943, § 71-1,102; Laws 1969, c. 563, § 1, p. 2291; Laws 1997, LB 452, § 1; Laws 2006, LB 833, § 2; R.S.Supp.,2006, § 71-1,102; Laws 2007, LB463, § 682.

Cross References

- **Alcoholic liquor,** possession and use in practice, see section 53-168.06.
- **Physician's lien for services,** see section 52-401 et seq.

Annotations

- Person engaging in the practice of medicine and surgery without a license may be restrained by injunction. State ex rel. Johnson v. Wagner, 139 Neb. 471, 297 N.W. 906 (1941).
- An emergency exists when the exigency is of so pressing a character that action must be taken before the services of a regularly qualified medical practitioner can be readily procured. Williams v. State, 118 Neb. 281, 224 N.W. 286 (1929).
- Practice of naprapathy was within definition of practice of medicine of former statute and unlawful unless statutory license obtained. Carpenter v. State, 106 Neb. 742, 184 N.W. 941 (1921).
- Sale of patent medicines by itinerant vendor does not constitute practice of medicine. Watkins Medical Co. v. Hunt, 104 Neb. 266, 177 N.W. 462 (1920).
- Healing by manipulation and adjustment of nerves, bones, and tissues was practicing medicine, within the definition of former statute. Harvey v. State, 96 Neb. 786, 148 N.W. 924 (1914).
- A corporation of licensed physicians making contracts for the services of its members was not practicing medicine within the definition of former statute. State Electro-Medical Institute v. State, 74 Neb. 40, 103 N.W. 1078 (1905).
- Former statute defining the practice of medicine construed to include the practice of Christian Science healing. State v. Buswell, 40 Neb. 158, 58 N.W. 728 (1894), 24 L.R.A. 68 (1894).

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

The following classes of persons shall not be construed to be engaged in the unauthorized practice of medicine:
(1) Persons rendering gratuitous services in cases of emergency;
(2) Persons administering ordinary household remedies;
(3) The members of any church practicing its religious tenets, except that they shall not prescribe or administer drugs or medicines, perform surgical or physical operations, nor assume the title of or hold themselves out to be physicians, and such members shall not be exempt from the quarantine laws of this state;
(4) Students of medicine who are studying in an accredited school or college of medicine and who gratuitously prescribe for and treat disease under the supervision of a licensed physician;
(5) Physicians who serve in the armed forces of the United States or the United States Public Health Service or who are employed by the United States Department of Veterans Affairs or other federal agencies, if their practice is limited to that service or employment;
(6) Physicians who are licensed in good standing to practice medicine under the laws of another state when incidentally called into this state or contacted via electronic or other medium for consultation with a physician licensed in this state. For purposes of this subdivision, consultation means evaluating the medical data of the patient as provided by the treating physician and rendering a recommendation to such treating physician as to the method of treatment or analysis of the data. The interpretation of a radiological image by a physician who specializes in radiology is not a consultation;
(7) Physicians who are licensed in good standing to practice medicine in another state but who, from such other state, order diagnostic or therapeutic services on an irregular or occasional basis, to be provided to an individual in this state, if such physicians do not maintain and are not furnished for regular use within this state any office or other place for the rendering of professional services or the receipt of calls;
(8) Physicians who are licensed in good standing to practice medicine in another state and who, on an irregular and occasional basis, are granted temporary hospital privileges to practice medicine and surgery at a hospital or other medical facility licensed in this state;
(9) Persons providing or instructing as to use of braces, prosthetic appliances, crutches, contact lenses, and other lenses and devices prescribed by a physician licensed to practice medicine while working under the direction of such physician;
(10) Dentists practicing their profession when licensed and practicing in accordance with the Dentistry Practice Act;
(11) Optometrists practicing their profession when licensed and practicing under and in accordance with the Optometry Practice Act;
(12) Osteopathic physicians practicing their profession if licensed and practicing under and in accordance with sections 38-2029 to 38-2033;
(13) Chiropractors practicing their profession if licensed and practicing under the Chiropractic Practice Act;

(14) Podiatrists practicing their profession when licensed to practice in this state and practicing under and in accordance with the Podiatry Practice Act;
(15) Psychologists practicing their profession when licensed to practice in this state and practicing under and in accordance with the Psychology Interjurisdictional Compact or the Psychology Practice Act;
(16) Advanced practice registered nurses practicing in their clinical specialty areas when licensed under the Advanced Practice Registered Nurse Practice Act and practicing under and in accordance with their respective practice acts;
(17) Surgical first assistants practicing in accordance with the Surgical First Assistant Practice Act;
(18) Persons licensed or certified under the laws of this state to practice a limited field of the healing art, not specifically named in this section, when confining themselves strictly to the field for which they are licensed or certified, not assuming the title of physician, surgeon, or physician and surgeon, and not professing or holding themselves out as qualified to prescribe drugs in any form or to perform operative surgery;
(19) Persons obtaining blood specimens while working under an order of or protocols and procedures approved by a physician, registered nurse, or other independent health care practitioner licensed to practice by the state if the scope of practice of that practitioner permits the practitioner to obtain blood specimens;
(20) Physicians who are licensed in good standing to practice medicine under the laws of another state or jurisdiction who accompany an athletic team or organization into this state for an event from the state or jurisdiction of licensure. This exemption is limited to treatment provided to such athletic team or organization while present in Nebraska; and
(21) Other trained persons employed by a licensed health care facility or health care service defined in the Health Care Facility Licensure Act or clinical laboratory certified pursuant to the federal Clinical Laboratories Improvement Act of 1967, as amended, or Title XVIII or XIX of the federal Social Security Act to withdraw human blood for scientific or medical purposes.
Any person who has held or applied for a license to practice medicine and surgery in this state, and such license or application has been denied or such license has been refused renewal or disciplined by order of limitation, suspension, or revocation, shall be ineligible for the exceptions described in subdivisions (5) through (8) of this section until such license or application is granted or such license is renewed or reinstated. Every act or practice falling within the practice of medicine and surgery as defined in section 38-2024 and not specially excepted in this section shall constitute the practice of medicine and surgery and may be performed in this state only by those licensed by law to practice medicine in Nebraska.
Source: Laws 1927, c. 167, § 101, p. 482; C.S.1929, § 71-1402; Laws 1943, c. 150, § 19, p. 547; R.S.1943, § 71-1,103; Laws 1961, c. 337, § 12, p. 1056; Laws 1969, c. 563, § 2, p. 2291; Laws 1969, c. 564, § 1, p. 2297; Laws 1971, LB 150, § 1; Laws 1984, LB 724, § 1; Laws 1989, LB 342, § 15; Laws 1991, LB 2, § 11; Laws 1992, LB 291, § 17; Laws 1992, LB 1019, § 40; Laws 1994, LB 1210, § 55; Laws 1996, LB 414, § 3; Laws 1996, LB 1044, § 420; Laws 1997, LB 452, § 2; Laws 1999, LB 366, § 9; Laws 1999, LB 828, § 78; Laws 2000, LB 819, § 86; Laws 2000, LB 1115, § 14; Laws 2002, LB 1062, § 17; Laws 2005, LB 256, § 23; Laws 2006, LB 833, § 3; R.S.Supp.,2006, § 71-1,103; Laws 2007, LB463, § 683; Laws 2016, LB721, § 20; Laws 2018, LB1034, § 30.
Cross References

- **Advanced Practice Registered Nurse Practice Act,** see section 38-201.
- **Chiropractic Practice Act,** see section 38-801.
- **Dentistry Practice Act,** see section 38-1101.
- **Health Care Facility Licensure Act,** see section 71-401.
- **Optometry Practice Act,** see section 38-2601.
- **Podiatry Practice Act,** see section 38-3001.
- **Psychology Interjurisdictional Compact,** see section 38-3901.
- **Psychology Practice Act,** see section 38-3101.
- **Surgical First Assistant Practice Act,** see section 38-3501.

Annotations

- Indictment charging illegal practice of medicine need not contain negative averments relative to exceptions set forth in this section. Carpenter v. State, 106 Neb. 742, 184 N.W. 941 (1921).
- Information charging illegal practice of medicine under former statute was not defective for failure to contain negative averments relative to exceptions set forth in this section. Sofield v. State, 61 Neb. 600, 85 N.W. 840 (1901).
- Under former statute a person not licensed to practice medicine or exempted from the provisions of the statute, who treated physical or mental ailments for pay, was liable to prosecution even though he acted under direction of a licensed physician or surgeon. State v. Paul, 56 Neb. 369, 76 N.W. 861 (1898).

38-2026. Medicine and surgery; license; qualifications; foreign medical graduates; requirements.
Except as otherwise provided in sections 38-2026.01 and 38-2027, each applicant for a license to practice medicine and surgery shall:
(1)(a) Present proof that he or she is a graduate of an accredited school or college of medicine, (b) if a foreign medical graduate, provide a copy of a permanent certificate issued by the Educational Commission for Foreign Medical Graduates that is currently effective and relates to such applicant or provide such credentials as are necessary to certify that such foreign medical graduate has successfully passed the Visa Qualifying Examination or its successor or equivalent examination required by the United States Department of Health and Human Services and the United States Citizenship and Immigration Services, or (c) if a graduate of a foreign medical school who has successfully completed a program of American medical training designated as the Fifth Pathway and who additionally has successfully passed the Educational Commission for Foreign Medical Graduates examination but has not yet received the permanent certificate attesting to the same, provide such credentials as certify the same to the Division of Public Health of the Department of Health and Human Services;
(2) Present proof that he or she has served at least one year of graduate medical education approved by the board or, if a foreign medical graduate, present proof that he or she has served at least two years of graduate medical education approved by the board;
(3) Pass a licensing examination approved by the board covering appropriate medical subjects; and
(4) Present proof satisfactory to the department that he or she, within the three years immediately preceding the application for licensure, (a) has been in the active practice of the profession of medicine and surgery in some other state, a territory, the District of Columbia, or Canada for a period of one year, (b) has had at least one year of graduate medical education as described in subdivision (2) of this section, (c) has completed continuing education in medicine and surgery approved by the board, (d) has completed a refresher course in medicine and surgery approved by the board, or (e) has completed the special purposes examination approved by the board.
Source: Laws 1927, c. 167, § 102, p. 483; C.S.1929, § 71-1403; Laws 1943, c. 150, § 20, p. 548; R.S.1943, § 71-1,104; Laws 1963, c. 408, § 6, p. 1312; Laws 1969, c. 563, § 3, p. 2293; Laws 1971, LB 150, § 2; Laws 1975, LB 92, § 3; Laws 1976, LB 877, § 25; Laws 1978, LB 761, § 1; Laws 1985, LB 250, § 13; Laws 1987, LB 390, § 1; Laws 1990, LB 1064, § 13; Laws 1991, LB 400, § 22; Laws 1994, LB 1210, § 56; Laws 1994, LB 1223, § 14; Laws 1996, LB 1044, § 421; Laws 1999, LB 828, § 79; Laws 2002, LB 1062, § 18; Laws 2003, LB 242, § 39; R.S.1943, (2003), § 71-1,104; Laws 2007, LB296, § 332; Laws 2007, LB463, § 684; Laws 2011, LB406, § 2; Laws 2018, LB1034, § 31.

Cross References

- **Credentialing,** general requirements and issuance procedures, see section 38-121 et seq.

Annotations

- The practice of chiropractic and the practice of medicine are distinct professions with different licensing requirements. Nelsen v. Grzywa, 9 Neb. App. 702, 618 N.W.2d 472 (2000).

38-2026.01. Reentry license; issuance; qualifications; department; powers; supervision; conversion of license; period valid; renewal.
(1) The department, with the recommendation of the board, may issue a reentry license to a physician who has not actively practiced medicine for the two-year period immediately preceding the filing of an application for a reentry license or who has not otherwise maintained continued competency during such period as determined by the board.
(2) To qualify for a reentry license, the physician shall meet the same requirements for licensure as a regular licensee and submit to evaluations, assessments, and an educational program as required by the board.
(3) If the board conducts an assessment and determines that the applicant requires a period of supervised practice, the department, with the recommendation of the board, may issue a reentry license allowing the applicant to practice medicine under supervision as specified by the board. After satisfactory completion of the period of supervised practice as determined by the board, the reentry licensee may apply to the department to convert the reentry license to a license issued under section 38-2026.
(4) After an assessment and the completion of any educational program that has been prescribed, if the board determines that the applicant is competent and qualified to practice medicine without supervision, the department, with the recommendation of the board, may convert the reentry license to a license issued under section 38-2026.
(5) A reentry license shall be valid for one year and may be renewed for up to two additional years if approved by the department, with the recommendation of the board.
(6) The issuance of a reentry license shall not constitute a disciplinary action.
Source: Laws 2011, LB406, § 3.

38-2027. Department; waiver of requirements; authorized; conditions; disciplinary action authorized.
(1) The department, with the recommendation of the board, may waive any requirement for more than one year of approved graduate medical education, as set forth in subdivision (2) of section 38-2026, if the applicant has served at least one year of graduate medical education approved by the board and if the following conditions are met:
(a) The applicant meets all other qualifications for a license to practice medicine and surgery;
(b) The applicant submits satisfactory proof that the issuance of a license based on the waiver of the requirement of more than one year of approved graduate medical education will not jeopardize the health, safety, and welfare of the citizens of this state; and
(c) The applicant submits proof that he or she will enter into the practice of medicine in a health profession shortage area designated as such by the Nebraska Rural Health Advisory Commission immediately upon obtaining a license to practice medicine and surgery based upon a waiver of the requirement for more than one year of graduate medical education.
(2) A license issued on the basis of such a waiver shall be subject to the limitation that the licensee continue in practice in the health profession shortage area and such other limitations, if any, deemed appropriate under the circumstances by the director, with the recommendation of the board, which may include, but shall not be limited to, supervision by a medical practitioner, training, education, and scope of practice. After two years of practice under a limited license issued on the basis of a waiver of the requirement of more than one year of graduate medical education, a licensee may apply to the department for removal of the limitations. The director, with the recommendation of the board, may grant or deny such application or may continue the license with limitations.
(3) In addition to any other grounds for disciplinary action against the license contained in the Uniform Credentialing Act, the department may take disciplinary action against a license granted on the basis of a waiver of the requirement of more than one year of graduate medical education for violation of the limitations on the license.
Source: Laws 2007, LB463, § 685.

38-2028. Reciprocity; requirements; military spouse; temporary license.
(1) An applicant for a license to practice medicine and surgery based on a license in another state or territory of the United States or the District of Columbia shall comply with the requirements of the Interstate Medical Licensure Compact beginning on the effective date of the compact or meet the standards set by the board pursuant to section 38-126, except that an applicant who has not passed one of the licensing examinations specified in the rules and regulations but has been duly licensed to practice medicine and surgery in some other state or territory of the United States of America or in the District of Columbia and obtained that license based upon a state examination, as approved by the board, may be issued a license by the department, with the recommendation of the board, to practice medicine and surgery.
(2) An applicant who is a military spouse may apply for a temporary license as provided in section 38-129.01.
Source: Laws 2007, LB463, § 686; Laws 2017, LB88, § 62.
Cross References

- **Interstate Medical Licensure Compact,** see section 38-3601.

38-2029. Practice as osteopathic physicians, defined.
(1) For purposes of the Uniform Credentialing Act, the following classes of persons shall be deemed to be engaged in practice as osteopathic physicians:
(a) Persons publicly professing to be osteopathic physicians or publicly professing to assume the duties incident to the practice of osteopathic physicians; and
(b) Persons who are graduates of a school or college of osteopathic medicine and who treat human ailments by that system of the healing art which was advocated and taught by the school or college of osteopathic medicine from which such person graduated at the time of his or her graduation as determined by the department, with the recommendation of the board.
(2) No license issued to osteopathic physicians under the Medicine and Surgery Practice Act shall authorize the person so licensed to perform surgical procedures except those usually performed by general practitioners, as determined by the department, with the recommendation of the board.
(3) Nothing in this section shall be construed to prohibit an osteopathic physician licensed in accordance with the act from serving as an assistant in surgery more complex than that usually performed by general practitioners, as determined by the department, with the recommendation of the board, when such surgery is performed by an osteopathic physician licensed pursuant to section 38-2032 or by an osteopathic physician or doctor of medicine licensed pursuant to section 38-2026. In no event shall this section or section 38-2032 be construed as

authorizing any physician to engage in any procedure which he or she is not qualified by training to perform according to the standards prevailing in the State of Nebraska at the time.
(4) Persons who are licensed to practice as osteopathic physicians who have demonstrated to the department, with the recommendation of the board, that they have acquired adequate training and knowledge for such purpose and have been so authorized by the department, with the recommendation of the board, may prescribe and administer drugs and medicines.
Source: Laws 1927, c. 167, § 115, p. 488; C.S.1929, § 71-1701; R.S.1943, § 71-1,137; Laws 1969, c. 565, § 1, p. 2299; Laws 1972, LB 1498, § 2; Laws 1981, LB 451, § 9; Laws 1989, LB 342, § 21; Laws 1996, LB 1044, § 442; Laws 1999, LB 828, § 103; R.S.1943, (2003), § 71-1,137; Laws 2007, LB463, § 687.
Annotations

- Osteopath may operate hospital. Morgan v. State, 155 Neb. 247, 51 N.W.2d 382 (1952).
- The practice of osteopathy consists of a system of manipulation of the limbs and body of the patient with the hands by kneading, rubbing or pressing upon the parts of the body. State ex rel. Johnson v. Wagner, 139 Neb. 471, 297 N.W. 906 (1941).
- The practice of osteopathy is regulated by statute and requires a license. Harvey v. State, 96 Neb. 786, 148 N.W. 924 (1914).

38-2030. Practice as osteopathic physicians; persons excepted.
For purposes of the Uniform Credentialing Act, the following classes of persons shall not be construed as engaged in practice as osteopathic physicians:
(1) Licensed physicians and surgeons, podiatrists, nurses, and dentists who are exclusively engaged in the practice of their respective professions;
(2) Physicians and surgeons who serve in the armed forces of the United States or the United States Public Health Service or who are employed by the United States Department of Veterans Affairs or other federal agencies, if their practice is limited to that service or employment; and
(3) Osteopathic physicians licensed in another state when incidentally called into this state in consultation with a licensed physician or an osteopathic physician licensed in this state.
Source: Laws 1927, c. 167, § 116, p. 488; C.S.1929, § 71-1702; R.S.1943, § 71-1,138; Laws 1961, c. 337, § 13, p. 1057; Laws 1969, c. 565, § 2, p. 2300; Laws 1989, LB 342, § 22; R.S.1943, (2003), § 71-1,138; Laws 2007, LB463, § 688.

38-2031. Osteopathic physician; license; requirements.
Every applicant for a license to practice as an osteopathic physician shall (1) present proof of having completed a four-year course in an accredited high school or its equivalent, (2) present proof of having graduated from an accredited school or college of osteopathic medicine, and (3) pass an examination, as approved by the board, in the science of osteopathy and the practice of the same.
Source: Laws 1927, c. 167, § 117, p. 489; C.S.1929, § 71-1703; R.S.1943, § 71-1,139; Laws 1981, LB 451, § 10; Laws 1989, LB 342, § 23; Laws 1996, LB 1044, § 443; Laws 1997, LB 752, § 159; Laws 1999, LB 828, § 104; R.S.1943, (2003), § 71-1,139; Laws 2007, LB463, § 689.
Cross References

- **Credentialing,** general requirements and issuance procedures, see section 38-121 et seq.

38-2032. Osteopathic physician; license; additional requirements.
(1) If a person (a) has graduated from an accredited school or college of osteopathic medicine since January 1, 1963, (b) meets all statutory requirements for licensure as an osteopathic physician, (c) has served one year of internship or its equivalent at an institution approved for such training by the board, (d) after his or her internship, has taken and passed the examination provided in section 38-2026, and (e) presents proof satisfactory to the department, with the recommendation of the board, that he or she, within the three years immediately preceding the application for licensure, (i) has been in the active practice of the profession of osteopathic medicine and surgery in some other state, a territory, the District of Columbia, or Canada for a period of one year, (ii) has had one year of graduate medical education as described in subdivision (1)(c) of this section, (iii) has completed continuing education in medicine and surgery or osteopathic medicine and surgery approved by the board, (iv) has completed a refresher course in medicine and surgery or osteopathic medicine and surgery approved by the board, or (v) has completed the special purposes examination approved by the board, such person, upon making application therefor, shall receive a license as a Doctor of Osteopathic Medicine and Surgery which shall qualify such person to practice osteopathic medicine and surgery.
(2) With respect to persons who have graduated from an accredited school or college of osteopathic medicine prior to January 1, 1963, the department, with the recommendation of the board, may issue a license to practice

osteopathic medicine and surgery to any such graduate who meets all the requirements for issuance of such license except graduation from an accredited school or college of osteopathic medicine after January 1, 1963.
Source: Laws 1963, c. 408, § 1, p. 1310; Laws 1969, c. 565, § 3, p. 2301; Laws 1981, LB 451, § 11; Laws 1989, LB 342, § 24; Laws 1996, LB 1044, § 444; Laws 1999, LB 828, § 105; Laws 2002, LB 1062, § 33; R.S.1943, (2003), § 71-1,139.01; Laws 2007, LB463, § 690.

38-2033. Osteopathic physician; license; scope.
(1) With respect to licenses issued pursuant to sections 38-2031 and 38-2032 and any renewals thereof, the department shall designate the extent of such practice as follows:
(a) License to practice as an osteopathic physician; or
(b) License to practice osteopathic medicine and surgery.
(2) Every license issued under sections 38-2031 and 38-2032 shall confer upon the holder thereof the right to practice osteopathic medicine and surgery as taught in the schools or colleges of osteopathic medicine recognized by the American Osteopathic Association in the manner and to the extent provided by such license.
Source: Laws 1927, c. 167, § 119, p. 490; C.S.1929, § 71-1705; R.S.1943, § 71-1,141; Laws 1969, c. 565, § 5, p. 2302; Laws 1989, LB 342, § 26; Laws 1996, LB 1044, § 446; R.S.1943, (2003), § 71-1,141; Laws 2007, LB296, § 343; Laws 2007, LB463, § 691.
Annotations

- The practice of obstetrics and the use of anaesthetics, though not within the definition of osteopathy, has by legislative action been included within the scope of the license to practice osteopathy. State ex rel. Johnson v. Wagner, 139 Neb. 471, 297 N.W. 906 (1941).

38-2034. Applicant; reciprocity; requirements; military spouse; temporary license.
(1) An applicant for a license to practice osteopathic medicine and surgery based on a license in another state or territory of the United States or the District of Columbia shall comply with the requirements of the Interstate Medical Licensure Compact beginning on the effective date of the compact or meet the standards set by the board pursuant to section 38-126, except that an applicant who has not passed one of the licensing examinations specified in the rules and regulations but has been duly licensed to practice osteopathic medicine and surgery in some other state or territory of the United States of America or in the District of Columbia and obtained that license based upon a state examination, as approved by the board, may be issued a license by the department, upon the recommendation of the board, to practice osteopathic medicine and surgery.
(2) An applicant who is a military spouse may apply for a temporary license as provided in section 38-129.01.
Source: Laws 2007, LB463, § 692; Laws 2017, LB88, § 63.
Cross References

- **Interstate Medical Licensure Compact,** see section 38-3601.

38-2035. Applicant; examination; retaking examination.
Applicants for licensure in medicine and surgery and osteopathic medicine and surgery shall pass the licensing examination. An applicant who fails to pass any part of the licensing examination within four attempts shall complete one additional year of postgraduate medical education at an accredited school or college of medicine or osteopathic medicine. All parts of the licensing examination shall be successfully completed within ten years. An applicant who fails to successfully complete the licensing examination within the time allowed shall retake that part of the examination which was not completed within the time allowed.
Source: Laws 2007, LB463, § 693.

38-2036. Physician locum tenens; issuance authorized; conditions; term.
A physician locum tenens may be issued by the department, with the recommendation of the board, to an individual who holds an active license to practice medicine and surgery or osteopathic medicine and surgery in another state when circumstances indicate a need for the issuance of a physician locum tenens in the State of Nebraska. A physician locum tenens may be issued for a period not to exceed ninety days in any twelve-month period.
Source: Laws 2007, LB463, § 694.

38-2037. Additional grounds for disciplinary action.
In addition to the grounds for disciplinary action found in sections 38-178 and 38-179, a license to practice medicine and surgery or osteopathic medicine and surgery or a license to practice as a physician assistant may be denied, refused renewal, limited, revoked, or suspended or have other disciplinary measures taken against it in accordance with section 38-196 when the applicant or licensee fails to comply with the provisions of section 71-603.01, 71-604, 71-605, or 71-606 relating to the signing of birth and death certificates.

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

38-2038. Temporary educational or visiting faculty permit; use.
The holder of a temporary educational permit or of a visiting faculty permit shall be entitled to practice medicine and surgery and any of its allied specialties, including prescribing medicine and controlled substances, while serving in graduate medical education, a fellowship, or a refresher course in the State of Nebraska, but neither the holder of a temporary educational permit nor the holder of a visiting faculty permit shall be qualified to engage in the practice of medicine and surgery or any of its allied specialties within the State of Nebraska and outside of the assigned graduate medical education, fellowship, refresher course, teaching program, or research program.
Source: Laws 1969, c. 560, § 9, p. 2283; Laws 1971, LB 150, § 6; R.S.1943, (2003), § 71-1,107.03; Laws 2007, LB463, § 696.

38-2039. Temporary educational permit; application; department; duties.
Before granting any temporary educational permit, the department, with the recommendation of the board, shall ascertain that an authorized provider of graduate medical education, a fellowship, or a refresher course has requested the issuance of a temporary educational permit for an applicant to participate in its graduate medical education, fellowship, or refresher course for the period involved.
Source: Laws 1969, c. 560, § 13, p. 2284; Laws 1971, LB 150, § 10; Laws 1996, LB 1044, § 430; R.S.1943, (2003), § 71-1,107.07; Laws 2007, LB296, § 336; Laws 2007, LB463, § 697.

38-2040. Visiting faculty permit; application; department; duties.
Before a visiting faculty permit is issued, the department, with the recommendation of the board, shall determine that an accredited school or college of medicine in the State of Nebraska has requested issuance of a visiting faculty permit for the individual involved to serve as a member of the faculty of such school or college of medicine. Any application for issuing a visiting faculty permit shall outline the faculty duties to be performed pursuant to the permit.
Source: Laws 1969, c. 560, § 14, p. 2284; Laws 1971, LB 150, § 11; Laws 1996, LB 1044, § 431; R.S.1943, (2003), § 71-1,107.08; Laws 2007, LB296, § 337; Laws 2007, LB463, § 698.

38-2041. Temporary educational or visiting faculty permits; recommend, when.
The recommendation of the board for the issuance of any temporary educational permits or any visiting faculty permits shall be made at regular meetings of such board, but the chairperson or one other member of the board shall have the power to recommend the issuance of such permits between the meetings of the board.
Source: Laws 1969, c. 560, § 15, p. 2285; Laws 1971, LB 150, § 12; Laws 1999, LB 828, § 87; R.S.1943, (2003), § 71-1,107.09; Laws 2007, LB463, § 699.

38-2042. Temporary educational or visiting faculty permit; duration; renewal.
The duration of any temporary educational or visiting faculty permit shall be determined by the department but in no case shall it be in excess of one year. The permit may be renewed annually as long as the holder of a temporary educational permit is still enrolled and participating in the program of supervised educational training or as long as the holder of a visiting faculty permit is still teaching students of medicine or conducting research.
Source: Laws 1969, c. 560, § 12, p. 2284; Laws 1971, LB 150, § 9; Laws 1989, LB 342, § 18; Laws 1996, LB 1044, § 429; R.S.1943, (2003), § 71-1,107.06; Laws 2007, LB296, § 335; Laws 2007, LB463, § 700.

38-2043. Temporary educational or visiting faculty permit; disciplinary action; grounds.
Any temporary educational or visiting faculty permit may be suspended, limited, or revoked by the department, with the recommendation of the board, at any time upon a finding that the reasons for issuing such permit no longer exist or that the person to whom such permit has been issued is no longer qualified to hold such permit.
Source: Laws 1969, c. 560, § 17, p. 2285; Laws 1971, LB 150, § 14; Laws 1996, LB 1044, § 433; Laws 1999, LB 828, § 89; R.S.1943, (2003), § 71-1,107.11; Laws 2007, LB463, § 701.

38-2044. Temporary educational permit; to whom issued; qualifications.
A temporary educational permit may be issued to graduates of foreign schools or colleges of medicine or to individuals if the applicant, in addition to meeting the other requirements for the issuance of such permit, presents to the department a copy of a permanent certificate of the Educational Commission on Foreign Medical Graduates currently effective and relating to such applicant or, in lieu thereof, such credentials as are necessary to certify to successful passage of the Visa Qualifying Examination, or its successor or equivalent examination, required by the United States Department of Health and Human Services and the United States Citizenship and Immigration Services or, if a graduate of a foreign medical school who has successfully completed a program of

American medical training designated as the Fifth Pathway and who additionally has successfully passed the Educational Commission on Foreign Medical Graduates examination but has not yet received a permanent certificate attesting to the same, and provides such credentials as are necessary to certify the same to the department, at such time as the department, with the recommendation of the board, determines, and, if so directed by the department, passes an examination approved by the board to measure his or her clinical competence to proceed to advanced training before advancing beyond the initial phase of the training program, and if such examination is required, pays the required fee.
Source: Laws 1969, c. 560, § 19, p. 2286; Laws 1971, LB 150, § 15; Laws 1974, LB 811, § 10; Laws 1978, LB 761, § 2; Laws 1991, LB 2, § 12; Laws 1996, LB 1044, § 434; Laws 1999, LB 828, § 90; Laws 2003, LB 242, § 41; R.S.1943, (2003), § 71-1,107.13; Laws 2007, LB463, § 702.

38-2045. Visiting faculty permit; issuance; conditions.
A visiting faculty permit may be issued to graduates of foreign schools or colleges of medicine or to individuals if an accredited college or school of medicine in the State of Nebraska has requested that such permit be issued. It shall not be necessary for such applicant to provide a certificate of the Educational Commission on Foreign Medical Graduates as required in the case of temporary educational permits. If directed by the department an applicant for a visiting faculty permit may be required to pass an examination approved by the board to measure his or her clinical competence to practice medicine and if such examination is required the applicant shall pay the required fee.
Source: Laws 1971, LB 150, § 16; Laws 1974, LB 811, § 11; Laws 1996, LB 1044, § 435; Laws 1999, LB 828, § 91; Laws 2003, LB 242, § 42; R.S.1943, (2003), § 71-1,107.14; Laws 2007, LB463, § 703.

38-2046. Physician assistants; legislative findings.
The Legislature finds that:
(1) In its concern with the geographic maldistribution of health care services in Nebraska it is essential to develop additional health personnel; and
(2) It is essential to encourage the more effective utilization of the skills of physicians by enabling them to delegate health care tasks to qualified physician assistants when such delegation is consistent with the patient's health and welfare.
It is the intent of the Legislature to encourage the utilization of such physician assistants by physicians.
Source: Laws 1973, LB 101, § 1; R.S.Supp.,1973, § 85-179.04; Laws 1985, LB 132, § 1; R.S.1943, (2003), § 71-1,107.15; Laws 2007, LB463, § 704.
Cross References

- **Student loan program,** Rural Health Systems and Professional Incentive Act, see section 71-5650.

38-2047. Physician assistants; services performed; supervision requirements.
(1) A physician assistant may perform medical services that (a) are delegated by and provided under the supervision of a licensed physician, (b) are appropriate to the level of competence of the physician assistant, (c) form a component of the supervising physician's scope of practice, and (d) are not otherwise prohibited by law.
(2) A physician assistant shall be considered an agent of his or 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.
(3) Each physician assistant and his or her supervising physician shall be responsible to ensure that (a) the scope of practice of the physician assistant is identified, (b) the delegation of medical tasks is appropriate to the level of competence of the physician assistant, (c) the relationship of and access to the supervising physician is defined, and (d) a process for evaluation of the performance of the physician assistant is established.
(4) A physician assistant may pronounce death and may complete and sign death certificates and any other forms if such acts are within the scope of practice of the physician assistant, are delegated by his or her supervising physician, and are not otherwise prohibited by law.
(5) In order for a physician assistant to practice in a hospital, (a) his or her supervising physician shall be a member of the medical staff of the hospital, (b) the physician assistant shall be approved by the governing board of the hospital, and (c) the physician assistant shall 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.
(6) For physician assistants with less than two years of experience, the department, with the recommendation of the board, shall adopt and promulgate rules and regulations establishing minimum requirements for the personal presence of the supervising physician, stated in hours or percentage of practice time, and may provide different

minimum requirements for the personal presence of the supervising physician based on the geographic location of the supervising physician's primary and other practice sites and other factors the board deems relevant.
(7) A physician assistant may render 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 standards of supervision established in rules and regulations adopted and promulgated under the Medicine and Surgery Practice Act. The board may consider an application for waiver of the standards and may waive the standards upon a showing of good cause by the supervising physician. The department may adopt and promulgate rules and regulations establishing minimum requirements for such waivers.
Source: Laws 1973, LB 101, § 3; R.S.Supp.,1973, § 85-179.06; Laws 1985, LB 132, § 3; Laws 1993, LB 316, § 2; Laws 1996, LB 1108, § 9; R.S.1943, (2003), § 71-1,107.17; Laws 2007, LB463, § 705; Laws 2009, LB195, § 43.
Cross References

- **Liability limitations:**
- Malpractice, Nebraska Hospital-Medical Liability Act, see section 44-2801 et seq.
- Rendering emergency aid, see section 25-21,186.

38-2048. Physician assistants; trainee; services performed.
Notwithstanding any other provision of law, a trainee may perform medical services when he or she renders such services within the scope of an approved program.
Source: Laws 1973, LB 101, § 4; R.S.Supp.,1973, § 85-179.07; Laws 1985, LB 132, § 4; R.S.1943, (2003), § 71-1,107.18; Laws 2007, LB463, § 706.

38-2049. Physician assistants; licenses; temporary licenses; issuance; military spouse; temporary license.
(1) The department, with the recommendation of the board, shall issue licenses to persons who are graduates of an approved program and have passed a proficiency examination.
(2) The department, with the recommendation of the board, shall issue temporary licenses under this subsection to persons who have successfully completed an approved program but who have not yet passed a proficiency examination. Any temporary license issued pursuant to this subsection shall be issued for a period not to exceed one year and under such conditions as determined by the department, with the recommendation of the board. The temporary license issued under this subsection may be extended by the department, with the recommendation of the board.
(3) Physician assistants approved by the board prior to April 16, 1985, shall not be required to complete the proficiency examination.
(4) An applicant who is a military spouse applying for a license to practice as a physician assistant may apply for a temporary license as provided in section 38-129.01.
Source: Laws 1973, LB 101, § 5; R.S.Supp.,1973, § 85-179.08; Laws 1985, LB 132, § 5; Laws 1996, LB 1108, § 10; R.S.1943, (2003), § 71-1,107.19; Laws 2007, LB463, § 707; Laws 2009, LB195, § 44; Laws 2017, LB88, § 64.
Cross References

- **Credentialing,** general requirements and issuance procedures, see section 38-121 et seq.

38-2050. Physician assistants; supervision; supervising physician; requirements; agreement.
(1) To be a supervising physician, a person shall:
(a) Be licensed to practice medicine and surgery under the Uniform Credentialing Act;
(b) Have no restriction imposed by the board on his or her ability to supervise a physician assistant; and
(c) Maintain an agreement with the physician assistant as provided in subsection (2) of this section.
(2)(a) An agreement between a supervising physician and a physician assistant shall (i) provide that the supervising physician will exercise supervision over the physician assistant in accordance with the Medicine and Surgery Practice Act and the rules and regulations adopted and promulgated under the act relating to such agreements, (ii) define the scope of practice of the physician assistant, (iii) provide that the supervising physician will retain professional and legal responsibility for medical services rendered by the physician assistant pursuant to such agreement, and (iv) be signed by the supervising physician and the physician assistant.
(b) The supervising physician shall keep the agreement on file at his or her primary practice site, shall keep a copy of the agreement on file at each practice site where the physician assistant provides medical services, and shall make the agreement available to the board and the department upon request.
(3) Supervision of a physician assistant by a supervising physician shall be continuous but shall not require the physical presence of the supervising physician at the time and place that the services are rendered.
(4) A supervising physician may supervise no more than four physician assistants at any one time. The board may consider an application for waiver of this limit and may waive the limit upon a showing that the supervising

physician meets the minimum requirements for the waiver. The department may adopt and promulgate rules and regulations establishing minimum requirements for such waivers.
Source: Laws 1973, LB 101, § 6; R.S.Supp.,1973, § 85-179.09; Laws 1985, LB 132, § 6; Laws 1993, LB 316, § 3; R.S.1943, (2003), § 71-1,107.20; Laws 2007, LB463, § 708; Laws 2009, LB195, § 45.

38-2051. Repealed. Laws **2009, LB 195, § 111.**

38-2052. Physician assistants; misrepresentation; penalty.
Any person who has not been licensed by the department, with the recommendation of the board, and who holds himself or herself out as a physician assistant, or who uses any other term to indicate or imply that he or she is a physician assistant, shall be guilty of a Class IV felony.
Source: Laws 1973, LB 101, § 7; R.S.Supp.,1973, § 85-179.10; Laws 1977, LB 39, § 319; Laws 1985, LB 132, § 7; R.S.1943, (2003), § 71-1,107.21; Laws 2007, LB463, § 710.

38-2053. Physician assistants; negligent acts; liability.
Any physician or physician groups utilizing physician assistants shall be liable for any negligent acts or omissions of physician assistants while acting under their supervision and control.
Source: Laws 1973, LB 101, § 14; R.S.Supp.,1973, § 85-179.17; Laws 1985, LB 132, § 13; R.S.1943, (2003), § 71-1,107.28; Laws 2007, LB463, § 711.

38-2054. Physician assistants; licensed; not engaged in unauthorized practice of medicine.
Any physician assistant who is licensed and who renders services under the supervision and control of a licensed physician as provided by the Medicine and Surgery Practice Act shall not be construed to be engaged in the unauthorized practice of medicine.
Source: Laws 1973, LB 101, § 15; R.S.Supp.,1973, § 85-179.18; Laws 1985, LB 132, § 14; Laws 1996, LB 1108, § 13; R.S.1943, (2003), § 71-1,107.29; Laws 2007, LB463, § 712.

38-2055. Physician assistants; prescribe drugs and devices; restrictions.
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 established pursuant to rules and regulations adopted and promulgated under the Medicine and Surgery Practice Act. 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. A physician assistant to whom has been delegated the authority to prescribe controlled substances shall obtain a federal Drug Enforcement Administration registration number.
Source: Laws 1985, LB 132, § 15; Laws 1992, LB 1019, § 41; Laws 1999, LB 379, § 4; Laws 1999, LB 828, § 94; Laws 2005, LB 175, § 1; R.S.Supp.,2006, § 71-1,107.30; Laws 2007, LB463, § 713; Laws 2009, LB195, § 46.
Cross References

- **Schedules of controlled substances,** see section 28-405.

38-2056. Physician Assistant Committee; created; membership; powers and duties; per diem; expenses.
(1) There is hereby created the Physician Assistant Committee which shall review and make recommendations to the board regarding all matters relating to physician assistants that come before the board. Such matters shall include, but not be limited to, (a) applications for licensure, (b) physician assistant education, (c) scope of practice, (d) proceedings arising pursuant to sections 38-178 and 38-179, (e) physician assistant licensure and supervising physician requirements, and (f) continuing competency. The committee shall be directly responsible to the board.
(2) The committee shall be appointed by the State Board of Health and shall be composed of two physician assistants, one supervising physician, one member of the Board of Medicine and Surgery, and one public member. The chairperson of the committee shall be elected by a majority vote of the committee members.
(3) At the expiration of the four-year terms of the members serving on December 1, 2008, appointments shall be for five-year terms. Members shall serve no more than two consecutive full five-year terms. Reappointments shall be made by the State Board of Health.
(4) The committee shall meet on a regular basis and committee members shall, in addition to necessary traveling and lodging expenses, receive a per diem for each day actually engaged in the discharge of his or her duties, including compensation for the time spent in traveling to and from the place of conducting business. Traveling and lodging expenses shall be reimbursed on the same basis as provided in sections 81-1174 to 81-1177. The compensation shall not exceed fifty dollars per day and shall be determined by the committee with the approval of the department.

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

38-2057. Acupuncture; exemptions.
The provisions of the Medicine and Surgery Practice Act relating to acupuncture do not apply to:
(1) Any other health care practitioner credentialed under the Uniform Credentialing Act practicing within the scope of his or her profession;
(2) A student practicing acupuncture under the supervision of a person licensed to practice acupuncture under the Uniform Credentialing Act as part of a course of study approved by the department; or
(3) The practice of acupuncture by any person licensed or certified to practice acupuncture in any other jurisdiction when practicing in an educational seminar sponsored by a state-approved acupuncture or professional organization if the practice is supervised directly by a person licensed to practice acupuncture under the Uniform Credentialing Act.
Source: Laws 2001, LB 270, § 9; Laws 2003, LB 242, § 81; R.S.1943, (2003), § 71-1,345; Laws 2007, LB463, § 715.

38-2058. Acupuncture; license required; standard of care.
It is unlawful to practice acupuncture on a person in this state unless the acupuncturist is licensed to practice acupuncture under the Uniform Credentialing Act. An acupuncturist licensed under the Uniform Credentialing Act shall provide the same standard of care to patients as that provided by a person licensed under the Uniform Credentialing Act to practice medicine and surgery, osteopathy, or osteopathic medicine and surgery. An acupuncturist licensed under the Uniform Credentialing Act shall refer a patient to an appropriate practitioner when the problem of the patient is beyond the training, experience, or competence of the acupuncturist.
Source: Laws 2001, LB 270, § 10; R.S.1943, (2003), § 71-1,346; Laws 2007, LB463, § 716; Laws 2017, LB19, § 1.

38-2059. Acupuncture; consent required.
The practice of acupuncture shall not be performed upon any person except with the voluntary and informed consent of such person. Information provided in connection with obtaining such informed consent shall include, but not be limited to, the following:
(1) The distinctions and differences between the practice of acupuncture and the practice of medicine;
(2) The disclosure that an acupuncturist is not licensed to practice medicine or to make a medical diagnosis of the person's disease or condition and that a physician should be consulted for such medical diagnosis;
(3) The nature and the purpose of the acupuncture treatment; and
(4) Any medical or other risks associated with such treatment.
Source: Laws 2001, LB 270, § 11; R.S.1943, (2003), § 71-1,347; Laws 2007, LB463, § 717.

38-2060. Acupuncture; license requirements.
At the time of application for an initial license to practice acupuncture, the applicant shall present to the department proof that he or she:
(1) Has graduated from, after having successfully completed the acupuncture curriculum requirements of, a formal, full-time acupuncture program at a university, college, or school of acupuncture approved by the board which includes at least one thousand seven hundred twenty-five hours of entry-level acupuncture education consisting of a minimum of one thousand didactic and five hundred clinical hours;
(2) Has successfully passed an acupuncture examination approved by the board which shall include a comprehensive written examination in acupuncture theory, diagnosis and treatment technique, and point location; and
(3) Has successfully completed a clean-needle technique course approved by the board.
Source: Laws 2001, LB 270, § 12; R.S.1943, (2003), § 71-1,348; Laws 2007, LB463, § 718.
Cross References

- **Credentialing,** general requirements and issuance procedures, see section 38-121 et seq.

38-2061. Fees.
The department shall establish and collect fees for credentialing under the Medicine and Surgery Practice Act as provided in sections 38-151 to 38-157.
Source: Laws 2007, LB463, § 719.

38-2062. Anatomic pathology service; unprofessional conduct.
(1) It shall be unprofessional conduct for any physician who orders but does not supervise or perform a component of an anatomic pathology service to fail to disclose in any bill for such service presented to a patient, entity, or person:
(a) The name and address of the physician or laboratory that provided the anatomic service; and
(b) The actual amount paid or to be paid for each anatomic pathology service provided to the patient by the physician or laboratory that performed the service.
(2) For purposes of this section, anatomic pathology service means:
(a) Blood-banking services performed by pathologists;
(b) Cytopathology, which means the microscopic examination of cells from the following: Fluids; aspirates; washings; brushings; or smears, including the Pap test examination performed by a physician or under the supervision of a physician;
(c) Hematology, which means the microscopic evaluation of bone marrow aspirates and biopsies performed by a physician or under the supervision of a physician and peripheral blood smears when the attending or treating physician or technologist requests that a blood smear be reviewed by the pathologist;
(d) Histopathology or surgical pathology, which means the gross and microscopic examination and histologic processing of organ tissue performed by a physician or under the supervision of a physician; and
(e) Subcellular pathology and molecular pathology.
(3) For purposes of this section, anatomic pathology service does not include the initial collection or packaging of the specimen for transport.
Source: Laws 2009, LB394, § 2.

STATUTES PERTAINING TO THE NEBRASKA HOSPITAL-MEDICAL LIABILITY ACT

44-2840. Medical review panels; review claims; procedure; waiver.
(1) Provision is hereby made for the establishment of medical review panels to review all malpractice claims against health care providers covered by the Nebraska Hospital-Medical Liability Act in advance of filing such actions.
(2) No action against a health care provider may be commenced in any court of this state before the claimant's proposed complaint has been presented to a medical review panel established pursuant to section 44-2841 and an opinion has been rendered by the panel.
(3) The proceedings for action by the medical review panel shall be initiated by the patient or his or her representative by notice in writing with copy of a proposed complaint served upon the director personally or by registered or certified mail. Such notice shall designate the claimant's choice of the physician to serve on the panel, claimant's suggestion of an attorney to serve, and the court where the action shall be filed, if necessary.
(4) The claimant may affirmatively waive his or her right to a panel review, and in such case the claimant may proceed to file his or her action directly in court. If the claimant waives the panel review, the claimant shall serve a copy of the complaint upon the director personally or by registered or certified mail at the time the action is filed in court.
Source: Laws 1976, LB 434, § 40; Laws 1984, LB 692, § 16; Laws 2002, LB 876, § 75; Laws 2003, LB 146, § 5.
Annotations

- The language of the Political Subdivisions Tort Claims Act at subsection (4) of section 13-919 contemplates that a claim under the act must be filed and disposed of or withdrawn prior to presentation of the proposed petition to a medical review panel, or the waiver of a medical review panel, under this section. Keller v. Tavarone, 262 Neb. 2, 628 N.W.2d 222 (2001).
- The requirement that a copy of the petition must be served upon the director of the Department of Insurance when medical panel review is waived is merely a notice requirement and neither confers nor denies jurisdiction of the court. The filing of an action in court is affirmative conduct which constitutes waiver of medical panel review. Brewington v. Rickard, 235 Neb. 843, 457 N.W.2d 814 (1990); Ourada v. Cochran, 234 Neb. 63, 449 N.W.2d 211 (1989).
- A plaintiff's right to amend the wording of his specimen petition filed under this section in his petition later filed in the district court is the same as plaintiff's right to amend any other petition, so long as the matter submitted to the court is the same matter submitted to the medical review panel. Jacobs v. Goetowski, 221 Neb. 281, 376 N.W.2d 773 (1985).
- A specimen petition alleging medical malpractice is filed pursuant to this section when the parties fall under the coverage of the Nebraska Hospital-Medical Liability Act. Jacobs v. Goetowski, 221 Neb. 281, 376 N.W.2d 773 (1985).

44-2841. Medical review panel; members; selection; procedure.
(1) The medical review panel shall consist of one attorney admitted to practice law in the State of Nebraska and three physicians who hold unlimited licenses under the laws of this state to practice medicine. The attorney shall act in an advisory capacity and as chairperson of the panel, but shall have no vote.
(2) The medical review panel shall be selected in the following manner:
(a) All physicians engaged in the active practice of medicine in this state, whether in the teaching profession or otherwise, who hold a license to practice medicine shall be available for selection;
(b) Each party to the action shall have the right to select one physician and, upon selection, such physician shall be required to serve. The two physicians thus selected shall select the third physician panelist. If one of the health care providers involved is a hospital, a fourth panelist shall be selected who shall be a hospital administrator selected by the hospital;
(c) When there are multiple plaintiffs or defendants, there shall be only one physician or hospital administrator selected per side. The plaintiff, whether single or multiple, shall have the right to select one physician and the defendant, whether single or multiple, shall have the right to select one physician;
(d) A panelist so selected shall serve, except that for good cause shown he or she may be excused. To show good cause for relief from serving, the panelist shall be required to serve an affidavit upon a judge of a court having jurisdiction over the claim when filed. The affidavit shall set out the facts showing that service would constitute an unreasonable burden or undue hardship. The court may excuse the proposed panelist from serving;
(e) Within twenty days after receipt of notification of a proposed panelist by the plaintiff, the defendants shall select a proposed panelist and advise the plaintiff or his or her attorney;
(f) Within twenty days of receipt of notice of any selection, written challenge without cause may be made to the panel member. Upon challenge, a party shall select another panelist. If multiple plaintiffs or defendants are unable to agree on a physician panelist or if two such challenges are made and submitted, the judge shall submit a list consisting of three qualified panelists and each side shall strike one and the remaining member shall serve in place of the challenged panelist designated by the party; and
(g) The parties may agree on the attorney member of the board or, if no agreement can be reached, then five proposed attorney members shall be designated by the judge having jurisdiction of the cause. The parties shall then each strike two names alternately with the claimant striking first until both sides have stricken two names and the remaining name shall be the attorney member of the panel.
(3) If the members of the medical review panel have not been selected within one hundred twenty days following filing of the complaint required by section 44-2840, the court shall have authority to select members of the panel and to set a specific date for the hearing.
Source: Laws 1976, LB 434, § 41; Laws 1984, LB 692, § 17; Laws 2002, LB 876, § 76.
Annotations

- When a medical malpractice action is filed under the Nebraska Hospital-Medical Liability Act, the medical review panel is selected pursuant to this section. Jacobs v. Goetowski, 221 Neb. 281, 376 N.W.2d 773 (1985).

44-2842. Medical review panel; evidence considered; depositions; chairperson; duties.
(1) The evidence to be considered by the medical review panel shall be promptly submitted by the respective parties in written form only. If any party to the proceedings fails to submit his or her evidence within a reasonable time after notice from the panel requesting such evidence, the panel may proceed to decide the matter on the evidence previously submitted. The determination of reasonable time shall be made by the panel. The evidence submitted may consist of medical charts, X-rays, laboratory test results, excerpts of treatises, depositions of witnesses including parties, and any other form of evidence allowable by the medical review panel.
(2) Depositions of parties and witnesses may be taken prior to the convening of the panel and prior to the commencement of the action, but in such event the attorney for the medical care provider shall be furnished with a copy of the complaint which the claimant proposes to file at least ten days before any deposition is taken. The patient shall have the right to request and receive all medical and hospital records relating to his or her case which would be admissible in evidence in a court of law. The chairperson of the panel shall advise the panel relative to any legal question involved in the review proceeding and shall prepare the opinion of the panel. A copy of the evidence shall be sent to each member of the panel.
(3) Either party, after submission of all evidence and upon ten days' notice to the other side, shall have the right to convene the panel at a time and place agreeable to the members of the panel. At such time either party shall have the right to present argument concerning any matters relevant to issues to be decided by the panel before the issuance of its report. The chairperson of the panel shall preside at all meetings, which meetings shall be informal.

(4) If the members of the medical review panel have not convened within six months of the initiation of the proceeding, the judge may terminate the proceeding at the request of either party.
Source: Laws 1976, LB 434, § 42; Laws 1984, LB 692, § 18; Laws 2002, LB 876, § 77; Laws 2003, LB 146, § 6.

44-2843. Medical review panel; access to information; written opinion; issuance; basis for.
(1) The panel shall have the right and duty to request all necessary information. The panel may consult with medical authorities and may examine reports of such health care providers as may be necessary to fully inform itself regarding the issue to be decided. Both parties shall have full access to any material submitted to the panel.
(2) The panel shall have the sole duty to express its expert opinion in writing to each of the parties as to whether or not the evidence supports the conclusion that the defendant or defendants acted or failed to act within the appropriate standards of care as charged in the complaint and as to the issue of damages proximately caused by failure to act in accordance with such standards. Any issue relating to informed consent shall be considered as a charge of failure to act within the appropriate standard of care.
(3) After reviewing all evidence and, unless waived, after argument by counsel representing either party, the panel shall, within thirty days, render one or more of the following expert opinions which shall be in writing and mailed to each of the parties:
(a) The evidence supports the conclusion that the defendant failed to comply with the appropriate standard of care as charged in the complaint in specified particulars;
(b) The evidence supports the conclusion that the defendant involved met the applicable standard of care required under the circumstances; or
(c) There is a material issue of fact, not requiring expert opinion, bearing on liability for consideration by the court or jury in specified particulars.
(4) No dollar amounts or percentages of disability shall be provided by the panel. A majority vote of the voting members shall control action by the panel. The report of the panel shall be signed only by the chairman who shall certify that the report reflects the opinion of a majority of the voting members. If requested, a minority report shall be provided to any party.
Source: Laws 1976, LB 434, § 43.

44-2844. Request for review of a claim; filed; toll statute of limitations; panel report; admissible as evidence; panelist; immunity.
(1) The filing of the request for review of a claim shall toll the applicable statute of limitations for a period of ninety days following the issuance of the opinion by the medical review panel. The request for review of a claim shall be deemed filed when copy of the request together with a copy of the proposed complaint is delivered or mailed by registered or certified mail to the director, who shall immediately forward a copy to each health care provider named as a defendant at his last and usual place of residence or his office.
(2) The report or any minority report of the medical review panel shall be admissible as evidence in any action subsequently brought by the claimant in a court of law, but such report shall not be conclusive and either party shall have the right to call any member of the medical review panel as a witness. If called, the witness shall be required to appear and testify.
(3) A panelist shall have absolute immunity from civil liability for all communications, findings, opinions and conclusions made in the course and scope of duties prescribed by sections 44-2801 to 44-2855.
Source: Laws 1976, LB 434, § 44.
Annotations

- The word toll, as used in this section, means to interrupt, suspend, or temporarily stop the running of the statute of limitations. Jacobs v. Goetowski, 221 Neb. 281, 376 N.W.2d 773 (1985).
- Under this section, the running of the statute of limitations, as set out in section 44-2828, is interrupted during the medical review proceedings and recommences ninety days after the medical review panel issues its opinion. Jacobs v. Goetowski, 221 Neb. 281, 376 N.W.2d 773 (1985).
- Statute of limitations is tolled while a claim is before the medical review panel and for ninety days following its opinion. Prendergast v. Nelson, 199 Neb. 97, 256 N.W.2d 657 (1977).
- The report, or any minority report, of the review panel is admissible evidence if suit follows. Prendergast v. Nelson, 199 Neb. 97, 256 N.W.2d 657 (1977).

44-2845. Medical review panel; members; compensation; expert witness fee.
Each member of the medical review panel shall be paid fifty dollars per day for all work performed as a member of the panel, exclusive of time and services involved if called as a witness to testify in court and reasonable expenses incurred. Fees of the panel, including expenses, shall be paid equally by each side. If a panel member is called as an expert witness at the trial, the panel member shall be paid the customary expert witness fee.

Source: Laws 1976, LB 434, § 45; Laws 2002, LB 1139, § 23.

44-2846. Proceedings before panel; confidential; exception; waiver of privileges; when; witnesses; rights.
(1) Except for the introduction into evidence of the report of the panel, all proceedings before the medical review panel, all actions taken by any party or his counsel in preparation for such proceedings, and the submission of any matter to the medical review panel shall be handled on a confidential basis. Such hearing may not be conducted as a public hearing and the proceedings before the panel shall not be matters of public record.
(2) Initiation of proceedings before a medical review panel by a patient or his representative shall constitute waiver of any privilege or rights conferred by Chapter 27, article 5, as to any hospital records or testimony or records of any physician or surgeon who is attending or has attended such patient for physical or mental conditions or injuries or conditions involved in such proceeding to the same extent and with like effect as provided in Chapter 27, article 5. Any witness providing information or facts or opinions to the medical review panel shall be entitled to the immunities and protection provided to witnesses generally in court proceedings.
Source: Laws 1976, LB 434, § 46.

44-2847. Medical review panel; not to consider disputed questions of law; adviser to panel.
(1) Medical review panels shall be concerned only with the determination of the questions set forth in section 44-2843. Such panels shall not consider or report on disputed questions of law.
(2) To provide for uniformity of procedure, the Department of Health and Human Services may appoint a doctor of medicine from the members of the Board of Medicine and Surgery who may sit with each panel as an observer and as an adviser on procedure but without a vote.
Source: Laws 1976, LB 434, § 47; Laws 1996, LB 1044, § 242; Laws 1999, LB 828, § 5; Laws 2000, LB 1115, § 4; Laws 2007, LB296, § 181.

STATUTES PERTAINING TO THE UNIVERSITY OF NEBRASKA

85-179.01. College of Medicine; physicians' assistants and associates; program for education and training; establish.
Subject to statutory authorization and approval by the Coordinating Commission for Postsecondary Education pursuant to sections 85-1413 and 85-1414, the University of Nebraska through its College of Medicine may establish, develop, implement, and from time to time amend, change, and modify a general plan or program for the education and training of physicians' assistants and physicians' associates and to accomplish such purpose may:
(1) Establish a separate curriculum to be supervised and carried out by the faculty of the College of Medicine;
(2) Employ such additional faculty members and otherwise procure and contract for such professional and technical assistance as may be necessary or advisable;
(3) Acquire by purchase, lease, or gift such personal property as may be required or useful in connection with such program and the implementation thereof; and
(4) Cooperate and contract with other governmental agencies and subdivisions of government, both state and federal, and funding organizations.
Source: Laws 1972, LB 985, § 1; Laws 1991, LB 663, § 69.

85-179.02. College of Medicine; physicians' assistant or associate, defined.
For purposes of sections 85-179.01 to 85-179.03, unless the context otherwise requires, physicians' assistant or physicians' associate shall mean a person who is qualified by training and experience to act as an assistant to, or an associate of, a licensed physician.
Source: Laws 1972, LB 985, § 2.

85-179.03. College of Medicine; physicians' assistants or associates; Board of Regents; powers.
The power and authority granted by sections 85-179.01 to 85-179.03 may be exercised in whole or in part and from time to time as the Board of Regents of the University of Nebraska may in its discretion determine.
Source: Laws 1972, LB 985, § 3.