

## Administrative Procedures – Final Proposed Rule Filing

**Instructions:**

In accordance with Title 3 Chapter 25 of the Vermont Statutes Annotated and the “Rule on Rulemaking” adopted by the Office of the Secretary of State, this filing will be considered complete upon filing and acceptance of these forms with the Office of the Secretary of State, and the Legislative Committee on Administrative Rules.

All forms requiring a signature shall be original signatures of the appropriate adopting authority or authorized person, and all filings are to be submitted at the Office of the Secretary of State, no later than 3:30 pm on the last scheduled day of the work week.

The data provided in text areas of these forms will be used to generate a notice of rulemaking in the portal of “Proposed Rule Postings” online, and the newspapers of record if the rule is marked for publication. Publication of notices will be charged back to the promulgating agency.

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**PLEASE REMOVE ANY COVERSHEET OR FORM NOT  
REQUIRED WITH THE CURRENT FILING BEFORE DELIVERY!**

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**Certification Statement:** As the adopting Authority of this rule (see 3 V.S.A. § 801 (b) (11) for a definition), I approve the contents of this filing entitled:

**Rules of the Board of Medical Practice**

/s/ Jenney Samuelson

(signature)

, on 2/18/2022  
(date)

Printed Name and Title:

Jenney Samuelson

Secretary

Agency of Human Services

RECEIVED BY: \_\_\_\_\_

- ☐ Coversheet
- ☐ Adopting Page
- ☐ Economic Impact Analysis
- ☐ Environmental Impact Analysis
- ☐ Strategy for Maximizing Public Input
- ☐ Scientific Information Statement (if applicable)
- ☐ Incorporated by Reference Statement (if applicable)
- ☐ Clean text of the rule (Amended text without annotation)
- ☐ Annotated text (Clearly marking changes from previous rule)
- ☐ ICAR Minutes
- ☐ Copy of Comments
- ☐ Responsiveness Summary

1. TITLE OF RULE FILING:

**Rules of the Board of Medical Practice**

2. PROPOSED NUMBER ASSIGNED BY THE SECRETARY OF STATE

21P-034

3. ADOPTING AGENCY:

Department of Health

4. PRIMARY CONTACT PERSON:

*(A PERSON WHO IS ABLE TO ANSWER QUESTIONS ABOUT THE CONTENT OF THE RULE).*

Name: Brendan Atwood

Agency: Department of Health

Mailing Address: 108 Cherry Street, Burlington VT 05401

Telephone: 802 863 - 7280 Fax: 802 951 - 1275

E-Mail: ahs.vdhrules@vermont.gov

Web URL *(WHERE THE RULE WILL BE POSTED)*:

<http://www.healthvermont.gov/about-us/laws-regulations/public-comment>

5. SECONDARY CONTACT PERSON:

*(A SPECIFIC PERSON FROM WHOM COPIES OF FILINGS MAY BE REQUESTED OR WHO MAY ANSWER QUESTIONS ABOUT FORMS SUBMITTED FOR FILING IF DIFFERENT FROM THE PRIMARY CONTACT PERSON).*

Name: David Englander

Agency: Department of Health

Mailing Address: 108 Cherry Street, Burlington VT 05401

Telephone: 802 863 - 7280 Fax: 802 951 - 1275

E-Mail: ahs.vdhrules@vermont.gov

6. RECORDS EXEMPTION INCLUDED WITHIN RULE:

*(DOES THE RULE CONTAIN ANY PROVISION DESIGNATING INFORMATION AS CONFIDENTIAL; LIMITING ITS PUBLIC RELEASE; OR OTHERWISE EXEMPTING IT FROM INSPECTION AND COPYING?)* No

IF YES, CITE THE STATUTORY AUTHORITY FOR THE EXEMPTION:

PLEASE SUMMARIZE THE REASON FOR THE EXEMPTION:

7. LEGAL AUTHORITY / ENABLING LEGISLATION:

*(THE SPECIFIC STATUTORY OR LEGAL CITATION FROM SESSION LAW INDICATING WHO THE ADOPTING ENTITY IS AND THUS WHO THE SIGNATORY SHOULD BE. THIS SHOULD BE A SPECIFIC CITATION NOT A CHAPTER CITATION).*

26 V.S.A. § 1351(e), 3 V.S.A. § 801(b)(11), and 3 V.S.A. § 831(d).

8. EXPLANATION OF HOW THE RULE IS WITHIN THE AUTHORITY OF THE AGENCY:

26 V.S.A. § 1351(E) states: "THE COMMISSIONER OF HEALTH SHALL ADOPT, AMEND, AND REPEAL RULES OF THE BOARD THAT THE COMMISSIONER DETERMINES NECESSARY TO CARRY OUT THE PROVISIONS OF THIS CHAPTER AND CHAPTERS 7, 29, 31, AND 52 OF THIS TITLE."

9. THE FILING HAS CHANGED SINCE THE FILING OF THE PROPOSED RULE.

10. THE AGENCY HAS INCLUDED WITH THIS FILING A LETTER EXPLAINING IN DETAIL WHAT CHANGES WERE MADE, CITING CHAPTER AND SECTION WHERE APPLICABLE.

11. SUBSTANTIAL ARGUMENTS AND CONSIDERATIONS WERE NOT RAISED FOR OR AGAINST THE ORIGINAL PROPOSAL.

12. THE AGENCY HAS INCLUDED COPIES OF ALL WRITTEN SUBMISSIONS AND SYNOPSES OF ORAL COMMENTS RECEIVED.

13. THE AGENCY HAS INCLUDED A LETTER EXPLAINING IN DETAIL THE REASONS FOR THE AGENCY'S DECISION TO REJECT OR ADOPT THEM.

14. CONCISE SUMMARY (150 WORDS OR LESS):

The proposed changes update existing rules to reflect changes to statute enacted that modified: 1) the qualifications for physician licensure; 2) the Board's powers and duties, and the Board's complaint, investigation, and hearing processes; 3) the requirements for Physician Assistants; and, 4) the provision for reciprocity of licensure from any other state when in good standing. It also makes operational a new option in law for the Board to offer non-disciplinary penalties for administrative infractions in lieu of possible discipline. Last, it provides written procedures for the Board to conduct hearings remotely when needed.

15. EXPLANATION OF WHY THE RULE IS NECESSARY:

With one exception the changes are prompted by broad revisions to statute that necessitated updated rule standards: Act 123 (2019); Act 126 (2019); and Act 152 (2020). The provisions on remote hearings are not statutorily required but were the only way to hold hearings during the Covid-19 pandemic, and they remain an important option for the Board in the face of the ongoing pandemic and potential situations in the future that would similarly impact the Board's ability to carry out its regulatory functions.

**16. EXPLANATION OF HOW THE RULE IS NOT ARBITRARY:**

Most changes are required by statute. Without this rulemaking, the Board and the parties involved in Board hearings will lack guidance on the procedures for virtual hearings.

**17. LIST OF PEOPLE, ENTERPRISES AND GOVERNMENT ENTITIES AFFECTED BY THIS RULE:**

Physicians, physician assistants, physician employers, and Vermonters seeking medical care.

**18. BRIEF SUMMARY OF ECONOMIC IMPACT (150 WORDS OR LESS):**

Most provisions will have no economic impact. Waiving licensing fees for military spouses accompanying a member ordered to Vermont could affect fees (\$120 - \$650), but the potential for economic impact is remote given that Vermont has no active-duty military bases. The provisions regarding non-disciplinary administrative penalties specify the amounts for various offenses up to the \$250 maximum set in law. However, in that the offenses are already subject to the imposition of an administrative penalty up to \$1,000 using existing disciplinary processes, it would be highly speculative to infer any economic impact. It only operationalizes an alternative procedure authorized by the change in law. Finally, there could be a small savings in expenses to the Board if some hearings are held remotely; that would avoid some expenses paid to members who would otherwise travel to hearings. Other participants would also avoid travel expenses.

**19. A HEARING WAS HELD.**



**20. HEARING INFORMATION**

(THE FIRST HEARING SHALL BE NO SOONER THAN 30 DAYS FOLLOWING THE POSTING OF NOTICES ONLINE).

IF THIS FORM IS INSUFFICIENT TO LIST THE INFORMATION FOR EACH HEARING PLEASE ATTACH A SEPARATE SHEET TO COMPLETE THE HEARING INFORMATION.

Date: 12/9/2021

Time: 03:00 PM

Street Address: 108 Cherry Street, Rm. 2A, Burlington, VT

Zip Code: 05401

Date:

Time: AM

Street Address:

Zip Code:

Date:

Time: AM

Street Address:

Zip Code:

Date:

Time: AM

Street Address:

Zip Code:

**21. DEADLINE FOR COMMENT (NO EARLIER THAN 7 DAYS FOLLOWING LAST HEARING):**

12/16/2021

**KEYWORDS** (PLEASE PROVIDE AT LEAST 3 KEYWORDS OR PHRASES TO AID IN THE SEARCHABILITY OF THE RULE NOTICE ONLINE).

The Board's licensees

Board of Medical Practice

Physician

Physician Assistant

Doctor

Virtual hearing

**To:** Senator Mark McDonald, Chair of the Legislative Committee on Administrative Rules  
**From:** Natalie Weill, Public Health Policy Advisor for Vermont Department of Health  
**Re:** Board of Medical Practice Rule  
**Date:** January 31, 2022

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*Following the filing of the rule for public comment, the Health Department made the following changes to the proposed rule:*

1. Section 23.2.3 has been amended to clarify qualifying continuing medical education activities:

“Certain activities sponsored by the Board may qualify for CME credit ~~despite not being even if not~~ designated as AMA PRA Category 1 activities. If CME credit is available, it will be specifically stated ~~in by~~ the Board ~~announcements about the activity.~~”

2. Section 26.0 has been amended to allow more flexibility for physician assistants renewing their licenses:

“A physician assistant who is not in active practice may renew an inoperable license but cannot practice until a practice agreement with a participating physician is received by the Board. Each practice agreement between a physician assistant and a participating physician must be reviewed, and if necessary updated, during the ~~30~~ 90 days preceding submission of the physician assistant’s renewal application. The physician assistant shall maintain documentation to show the date on which the practice agreement was reviewed.”

3. Section 27.1 has been updated to provide clarity:

“Practice agreements must meet the requirements of 26 V.S.A. § 1735a. The requirement for a physician to be accessible for consultation by telephone or electronic means at all times when a physician assistant is practicing is also satisfied when a physician is in the same location and available for in-person consultation. A practice agreement may be submitted in hard copy or filed with the Board by email or fax.”

4. Section 27.6 has been updated to allow more flexibility for physician assistants:

“Submission of a New Practice Agreement Upon Unavailability of Participating Physician – General Rule. ~~When a physician assistant’s participating physician becomes unavailable~~ As soon as it is known that a physician assistant’s participating



## DEPARTMENT OF HEALTH

physician is will be unavailable and is expected to be unavailable for 30 days or more in any circumstances other than as described in 27.5, the physician assistant must submit a new practice agreement with a participating physician and may not practice after the participating physician becomes unavailable until the new practice agreement has been submitted to the Board.

5. Section 27.7 has been added for clarity:

“Practice Agreements When A Physician Assistant Has Multiple Practice Sites. While separate practice agreements are not required for each practice setting of a PA who has multiple practice settings, in some cases it may not be possible for a single practice agreement to cover each of a PA’s practice settings, such as when a PA works for two different employers, or when a participating physician within one employing organization is not willing to act as the participating physician for an additional practice site with the same employer. Although a single practice agreement may apply to more than one practice setting, in instances where a practice agreement does not work for one or more of a PA’s additional practice sites there must be a practice agreement in place that applies to each practice setting.”

6. Section 70.0 has been updated for clarity:

“The Board has discretion to offer licensees the opportunity to resolve a violation of an applicable statute or rule by paying a nondisciplinary financial penalty as provided by 26 V.S.A. § 1377. If such an offer is made and accepted, and the specified penalty received, the matter will be closed with no further action. ~~A licensee does not have the right to request that an offer for resolution by nondisciplinary financial penalty be extended~~ A licensee does not have the right to have a case resolved by nondisciplinary financial penalty if the Board does not extend an offer to resolve it in that manner.”

7. Section 79.1 has been updated to conform with existing rules:

“Upon order of the Board of Medical Practice, or a Hearing Officer acting on the Hearing Officer’s own behalf, a hearing may be held by telephone, video, or other electronic means (“Remote Hearings”). If a party objects to having all or part of a hearing conducted as a Remote Hearing the party must submit a written motion within 14 days, or sooner if specified in the order scheduling the remote hearing. In ruling on the objection, the Board or Hearing Officer shall consider the factors set forth in Vermont Rule of Civil Procedure 43.1. This section sets forth procedures for conducting Remote Hearings.”

# Administrative Procedures – Adopting Page

## **Instructions:**

This form must accompany each filing made during the rulemaking process:

Note: To satisfy the requirement for an annotated text, an agency must submit the entire rule in annotated form with proposed and final proposed filings. Filing an annotated paragraph or page of a larger rule is not sufficient. Annotation must clearly show the changes to the rule.

When possible, the agency shall file the annotated text, using the appropriate page or pages from the Code of Vermont Rules as a basis for the annotated version. New rules need not be accompanied by an annotated text.

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### 1. TITLE OF RULE FILING:

**Rules of the Board of Medical Practice**

### 2. ADOPTING AGENCY:

Department of Health

### 3. TYPE OF FILING (*PLEASE CHOOSE THE TYPE OF FILING FROM THE DROPDOWN MENU BASED ON THE DEFINITIONS PROVIDED BELOW*):

- **AMENDMENT** - Any change to an already existing rule, even if it is a complete rewrite of the rule, it is considered an amendment as long as the rule is replaced with other text.
- **NEW RULE** - A rule that did not previously exist even under a different name.
- **REPEAL** - The removal of a rule in its entirety, without replacing it with other text.

This filing is **AN AMENDMENT OF AN EXISTING RULE** .

### 4. LAST ADOPTED (*PLEASE PROVIDE THE SOS LOG#, TITLE AND EFFECTIVE DATE OF THE LAST ADOPTION FOR THE EXISTING RULE*):

RULES OF THE BOARD OF MEDICAL PRACTICE. January 1, 2020  
Secretary of State Rule Log #19-071.



**State of Vermont**  
**Agency of Administration**  
109 State Street  
Montpelier, VT 05609-0201  
[www.aoa.vermont.gov](http://www.aoa.vermont.gov)

[phone] 802-828-3322  
[fax] 802-828-3320

*Office of the Secretary*

## INTERAGENCY COMMITTEE ON ADMINISTRATIVE RULES (ICAR) MINUTES

**Meeting Date/Location:** October 11, 2021, Physical Location: Pavilion Building, 109 State Street, 5th Floor, Montpelier, VT 05609; Virtual Option: Via Microsoft Teams  
**Members Present:** Chair Kristin Clouser, Diane Bothfeld, Jen Mojo, John Kessler, Diane Sherman, Clare O'Shaughnessy and Mike Obuchowski  
**Members Absent:** Ashley Berliner and Dirk Anderson  
**Minutes By:** Melissa Mazza-Paquette

- 2:02 p.m. meeting called to order, welcome and introductions.
- Review and approval of minutes from the September 8, 2021 meeting.
- No additions/deletions to agenda. Agenda approved as drafted.
- Approval of draft changes to updated pre-filing ICAR forms discussed at the 9/7/21 and 9/8/21 meetings.
  - 1) Motion made by John Kessler, seconded by Diane Bothfeld and approved unanimously.
- Note: The following emergency rules were supported by ICAR Chair Clouser:
  - 1) 'Rule on Rulemaking' by the Office of the Secretary of State' on September 23, 2021
    - a) This emergency filing will allow the continuation of electronic submission of APA filings by email with a "conformed signature" until the permanent rule can be adopted and implemented. The benefits of electronic submission and continued reduction of in-person contact continue to be desirable as the COVID-19 pandemic persists. This amendment will also remove a requirement to notify ICAR and LCAR 30 days before the SOS makes changes to the filing forms and make some minor formatting and housekeeping changes which will also be present in the permanent rule.
  - 2) 'PUC Emergency Rule 2.500 COVID-19 Emergency Procedures' by the Public Utility Commission on October 7, 2021
    - a) This emergency rule amends various filing and procedural requirements and provides alternative procedures to reduce or eliminate in-person contact between members of the public and Commission staff or other members of the public to reduce the risk of exposure to the COVID-19 virus. This serves as a third extension of the emergency rule filed in April 2020. Because the office will reopen and we will resume typical mail processing while this rule is in place, we have made a change to Rule 2.503 to permit electronic or paper filing rather than requiring electronic only.
  - 3) 'Child Care Licensing Regulations: Center Based Child Care and Preschool Programs' by the Agency of Human Services, Department for Children and Families on October 7, 2021
    - a) Rule 2.7 (Rule Variance) is amended to exempt rules 3.5 (Nondiscriminatory Enrollment), 4.7 (Communicating CBCCPP Policies and Procedures), 6.1.4.3 (Respect for Diversity), and 6.2.5.1 (Quality of Interactions).



- 4) 'Licensing Regulations for Afterschool Child Care Programs' by the Agency of Human Services, Department for Children and Families on October 7, 2021
- a) Rule 3.15 is amended to include non-discriminatory enrollment language found in both the Center Based Child Care and Preschool Program (CBCCPP) licensing regulations and Registered and Licensed Family Child Care Homes (FCCH) licensing regulations. Rule 4.7 is amended to include the non-discrimination assurance language found in both the CBCCPP and FCCH licensing regulations. Rule 8.6 is amended to include the respect for diversity language found in both the CBCCPP and FCCH licensing regulations. Rule 18.66 (Rule Variance) is amended to exempt rules 3.15, 4.7, and 8.6.
- 5) 'Licensing Regulations for Registered and Licensed Family Child Care Homes' by the Agency of Human Services, Department for Children and Families on October 8, 2021
- a) Rule 2.7 (Rule Variance) is amended to exempt rules 3.4 (Nondiscriminatory Enrollment), 4.7 (Communicating CBCCPP Policies and Procedures), 6.1.4.3 (Respect for Diversity), and 6.2.3 (Quality of Interactions).
- No public comments made.
  - Presentation of Proposed Rules on pages 3-4 to follow.
    1. Recognized Accrediting Agencies and Relationship with Other Entities, State Board of Education, page 3
    2. Rules of the Board of Medical Practice, by the Agency of Human Services, Department of Health, page 4
  - Next scheduled meeting is November 8, 2021 at 2:00 p.m.
  - Committee discussion regarding potential new date and time for future meetings.
  - 3:33 p.m. meeting adjourned.

**Proposed Rule: Rules of the Board of Medical Practice, by the Agency of Human Services,  
Department of Health  
Presented By: David Herlihy**

Motion made to accept the rule by John Kessler, seconded by Jen Mojo, and passed unanimously except for Mike Obuchowski who abstained, with the following recommendations:

1. Proposed Rule Coversheet, page 2, #6: Clarify where the authority is derived from.
2. Proposed Rule Coversheet, page 3, #9: Clarify "Most".
3. Proposed Rule Coversheet, page 4, #12: Include: economic impact of each change; range of fee costs and potential number of incidents; and expected frequency of financial penalties.
4. Economic Impact Analysis, page 1, #3: Include more information including estimated costs.
5. Economic Impact Analysis, page 2, #9: Include all economic impacts.
6. Public Input Statement, page 1, #3: Include outreach plan.

DRAFT

# Administrative Procedures – Economic Impact Analysis

## **Instructions:**

In completing the economic impact analysis, an agency analyzes and evaluates the anticipated costs and benefits to be expected from adoption of the rule; estimates the costs and benefits for each category of people enterprises and government entities affected by the rule; compares alternatives to adopting the rule; and explains their analysis concluding that rulemaking is the most appropriate method of achieving the regulatory purpose.

Rules affecting or regulating schools or school districts must include cost implications to local school districts and taxpayers in the impact statement, a clear statement of associated costs, and consideration of alternatives to the rule to reduce or ameliorate costs to local school districts while still achieving the objectives of the rule (see 3 V.S.A. § 832b for details).

Rules affecting small businesses (excluding impacts incidental to the purchase and payment of goods and services by the State or an agency thereof), must include ways that a business can reduce the cost or burden of compliance or an explanation of why the agency determines that such evaluation isn't appropriate, and an evaluation of creative, innovative or flexible methods of compliance that would not significantly impair the effectiveness of the rule or increase the risk to the health, safety, or welfare of the public or those affected by the rule.

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### 1. TITLE OF RULE FILING:

**Rules of the Board of Medical Practice**

### 2. ADOPTING AGENCY:

Department of Health

### 3. CATEGORY OF AFFECTED PARTIES:

*LIST CATEGORIES OF PEOPLE, ENTERPRISES, AND GOVERNMENTAL ENTITIES POTENTIALLY AFFECTED BY THE ADOPTION OF THIS RULE AND THE ESTIMATED COSTS AND BENEFITS ANTICIPATED:*

Physicians, physician assistants: There will be a cost savings associated with their being no need to travel for hearings and deliberations.

Physician employers:

Vermonters seeking medical care: No economic impact is expected.

### 4. IMPACT ON SCHOOLS:



## Economic Impact Analysis

*INDICATE ANY IMPACT THAT THE RULE WILL HAVE ON PUBLIC EDUCATION, PUBLIC SCHOOLS, LOCAL SCHOOL DISTRICTS AND/OR TAXPAYERS CLEARLY STATING ANY ASSOCIATED COSTS:*

No impact.

5. **ALTERNATIVES:** *CONSIDERATION OF ALTERNATIVES TO THE RULE TO REDUCE OR AMELIORATE COSTS TO LOCAL SCHOOL DISTRICTS WHILE STILL ACHIEVING THE OBJECTIVE OF THE RULE.*

Not applicable given there will be no impact.

6. **IMPACT ON SMALL BUSINESSES:**

*INDICATE ANY IMPACT THAT THE RULE WILL HAVE ON SMALL BUSINESSES (EXCLUDING IMPACTS INCIDENTAL TO THE PURCHASE AND PAYMENT OF GOODS AND SERVICES BY THE STATE OR AN AGENCY THEREOF):*

None.

7. **SMALL BUSINESS COMPLIANCE:** *EXPLAIN WAYS A BUSINESS CAN REDUCE THE COST/BURDEN OF COMPLIANCE OR AN EXPLANATION OF WHY THE AGENCY DETERMINES THAT SUCH EVALUATION ISN'T APPROPRIATE.*

Not applicable given there will be no impact.

8. **COMPARISON:**

*COMPARE THE IMPACT OF THE RULE WITH THE ECONOMIC IMPACT OF OTHER ALTERNATIVES TO THE RULE, INCLUDING NO RULE ON THE SUBJECT OR A RULE HAVING SEPARATE REQUIREMENTS FOR SMALL BUSINESS:*

There are no alternatives given the statutory requirements. Failure to allow for remote hearings would prevent the Board from conducting hearings when in-person hearings are not possible, as in the current pandemic.

9. **SUFFICIENCY:** *EXPLAIN THE SUFFICIENCY OF THIS ECONOMIC IMPACT ANALYSIS.*

There is a logical inference that no travel will result in less cost to participants. The two other provisions that concern money, the fee waiver for military spouses and the list of non-disciplinary financial penalties, are assessed as having negligible economic impact, if any. With no active-duty military bases located in Vermont, very few military members are ordered here, and far fewer with a spouse who might seek a license from the Board. The non-disciplinary financial penalties do not create new offenses and penalties, but rather create a new pathway to impose a penalty for

### Economic Impact Analysis

offenses that already exist and that were already subject to imposition of a penalty of up to \$1,000 using existing disciplinary processes.

# Administrative Procedures – Environmental Impact Analysis

## **Instructions:**

In completing the environmental impact analysis, an agency analyzes and evaluates the anticipated environmental impacts (positive or negative) to be expected from adoption of the rule; compares alternatives to adopting the rule; explains the sufficiency of the environmental impact analysis.

Examples of Environmental Impacts include but are not limited to:

- Impacts on the emission of greenhouse gases
- Impacts on the discharge of pollutants to water
- Impacts on the arability of land
- Impacts on the climate
- Impacts on the flow of water
- Impacts on recreation
- Or other environmental impacts

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### 1. TITLE OF RULE FILING:

**Rules of the Board of Medical Practice**

### 2. ADOPTING AGENCY:

Department of Health

### 3. GREENHOUSE GAS: *EXPLAIN HOW THE RULE IMPACTS THE EMISSION OF GREENHOUSE GASES (E.G. TRANSPORTATION OF PEOPLE OR GOODS; BUILDING INFRASTRUCTURE; LAND USE AND DEVELOPMENT, WASTE GENERATION, ETC.):*

No impact.

### 4. WATER: *EXPLAIN HOW THE RULE IMPACTS WATER (E.G. DISCHARGE / ELIMINATION OF POLLUTION INTO VERMONT WATERS, THE FLOW OF WATER IN THE STATE, WATER QUALITY ETC.):*

No impact.

### 5. LAND: *EXPLAIN HOW THE RULE IMPACTS LAND (E.G. IMPACTS ON FORESTRY, AGRICULTURE ETC.):*

No impact.

### 6. RECREATION: *EXPLAIN HOW THE RULE IMPACT RECREATION IN THE STATE:*

No impact.

### 7. CLIMATE: *EXPLAIN HOW THE RULE IMPACTS THE CLIMATE IN THE STATE:*

No impact.

Environmental Impact Analysis

8. **OTHER:** *EXPLAIN HOW THE RULE IMPACT OTHER ASPECTS OF VERMONT'S ENVIRONMENT:*

No impact.

9. **SUFFICIENCY:** *EXPLAIN THE SUFFICIENCY OF THIS ENVIRONMENTAL IMPACT ANALYSIS.*

No impact.

## Administrative Procedures – Public Input

### **Instructions:**

In completing the public input statement, an agency describes the strategy prescribed by ICAR to maximize public input, what it did do, or will do to comply with that plan to maximize the involvement of the public in the development of the rule.

This form must accompany each filing made during the rulemaking process:

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1. TITLE OF RULE FILING:

**Rules of the Board of Medical Practice**

2. ADOPTING AGENCY:

Department of Health

3. PLEASE DESCRIBE THE STRATEGY PRESCRIBED BY ICAR TO MAXIMIZE PUBLIC INVOLVEMENT IN THE DEVELOPMENT OF THE PROPOSED RULE:

Ensure consultation with stakeholders including: the Board of Medical Practice, the Vermont Medical Society, the Physician Assistant Academy of Vermont, and the Board's licensees. Schedule a public hearing, maintain a public comment period, and post the proposed rule on the Department of Health's website.

4. PLEASE LIST THE STEPS THAT HAVE BEEN OR WILL BE TAKEN TO COMPLY WITH THAT STRATEGY:

Prior to filing, the Department engaged stakeholders to seek input on the proposed changes to the rule.  
A public hearing will be held.

The rule will be posted for public comment on the Department's website  
<http://www.healthvermont.gov/about-us/laws-regulations/public-comment>.

5. BEYOND GENERAL ADVERTISEMENTS, PLEASE LIST THE PEOPLE AND ORGANIZATIONS THAT HAVE BEEN OR WILL BE INVOLVED IN THE DEVELOPMENT OF THE PROPOSED RULE:

The Board's Licensees  
Board of Medical Practice

**Public Input**

Vermont Medical Society

Vermont Association of Hospitals and Health Systems

Physician Assistant Academy of Vermont

Public Comment Responsiveness Summary  
Board of Medical Practice Rule

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The Department of Health (Department) held a public hearing on December 9, 2021, in Burlington, Vermont, for the proposed Board of Medical Practice Rule. Written comments were accepted through December 16, 2021. The following is a summary of comments received from the public and the Department's responses. All comments were submitted in writing. Comments of a similar or consistent nature have been consolidated and responded to accordingly.

1. **Comment:** A commenter requested that the proposed rule include a license renewal process for certified anesthesiologist assistants (CAA) that is similar to the license renewal process for physician assistants (PA), which would require CAAs to hold one Vermont license and a practice agreement for each facility at which they practice rather than a holding a separate license for each facility in which they practice.

**Response:** The change from the current site-specific certification for anesthesiologist assistants to a statewide license to practice similarly to physician assistants cannot be done through rulemaking. The system of site-specific certification is established in Chapter 29 of Title 26 of the Vermont Statutes Annotated, and a change to a system of licensure would need to be made in the law before the rules for anesthesiologist assistants could be modified.

2. **Comment:** A commenter requested a change to the wording in section 26.0 regarding the timing of review of the practice agreement by a physician assistant and their participating physician. The proposed draft called for that review to happen within 30 days of the submission of the physician assistant's renewal application. The commenter asked for the time period to be enlarged to within 3 months of submission of the renewal.

**Response:** The Department agrees that the rule can allow a period of up to 90 days prior to the submission of the renewal application. Accordingly, section 26.0 has been amended to the following: "Each practice agreement between a physician assistant and a participating physician must be reviewed, and if necessary updated, during the ~~30~~ 90 days preceding submission of the physician assistant's renewal application. The physician assistant shall maintain documentation to show the date on which the practice agreement was reviewed."

3. **Comment:** Two commenters requested changes under section 27.7, which stated, "There must be a practice agreement that applies to each practice setting." The commenters expressed concern that physician assistants might misinterpret that to mean that there must be a separate agreement for each practice site.

**Response:** The Department agrees that the language in this section was not sufficiently clear. Accordingly, section 27.7 has been amended to the following: "Practice Agreements When A Physician Assistant Has Multiple Practice Sites. While separate practice agreements are not required for each practice setting of a PA who has multiple practice settings, in some cases it may not be possible for a single practice agreement to cover each of a PA's practice settings, such as when a PA works for two different employers, or when a participating physician within one employing organization is not willing to act as the participating physician for an additional practice site with the same employer. Although a single practice agreement may apply to more than one practice setting, in instances where a practice agreement does not work for one or more of a PA's additional practice sites there must be a practice agreement in place that applies to each practice setting."

4. **Comment:** One commenter expressed concern regarding the requirements of section 27.6, which states: "When a physician assistant's participating physician becomes unavailable and is expected to be unavailable for 30 days or more in any circumstances other than as described in section 27.5, the physician assistant must submit a new practice agreement with a participating physician and may not practice after the participating physician becomes unavailable." The commenter suggested adding the following phrase at the end of the sentence: "until the new practice agreement has been submitted to the Board."

**Response:** The Department agrees that the suggested revision provides better clarity. Accordingly, section 27.6 has been amended to the following: "When a physician assistant's participating physician becomes unavailable and is expected to be unavailable for 30 days or more in any circumstances other than as described in 27.5, the physician assistant must submit a new practice agreement with a participating physician and may not practice after the participating physician becomes unavailable until the new practice agreement has been submitted to the Board."

5. **Comment:** A commenter expressed concern about the language in section 27.6 regarding a scenario in which a PA might not immediately learn of the unavailability of their participating physician and suggested adding wording to 27.6 to say: "as soon as it is known that the participating physician will be unavailable and is expected to be unavailable for 30 days or more."

**Response:** The Department agrees that a PA could comply only once aware of the issue. Accordingly, section 27.6 has been amended to the following: "~~When a physician assistant's participating physician becomes unavailable~~ As soon as it is known that a physician assistant's participating physician is will be unavailable and is expected to be unavailable for 30 days or more in any circumstances other than as described in 27.5, the physician assistant must submit a new practice agreement with a participating physician and may not practice until the new practice agreement has been submitted to the Board."

6. **Comment:** One commenter suggested clarifying modifications to section 23.2.3, which addresses CME credit for certain Board-sponsored activities.

**Response:** The Department agrees that this section will be improved by modifying it. Accordingly, section 23.2.3 has been amended to the following: "Certain activities sponsored by the Board may qualify for CME credit ~~despite not being~~ even if not designated as AMA PRA Category 1 activities. If CME credit is available, it will be specifically stated ~~in~~ by the Board ~~announcements about the activity.~~"

7. **Comment:** One commenter asked for section 27.1 to repeat language found in 26 V.S.A. § 1735a that states that practice agreements may be filed electronically.

**Response:** The Department agrees that repeating the language in 26 V.S.A. § 1735a will provide clarity. Accordingly, section 27.1 has been amended to include: "A practice agreement may be submitted in hard copy or filed with the Board by email or fax."

8. **Comment:** One commenter raised concerns about section 70.0 that says: "A licensee does not have the right to request that an offer for resolution by nondisciplinary financial penalty be extended."

**Response:** The Department understands and agrees with this concern and has amended section 70.0 to the following: "~~A licensee does not have the right to request that an offer for resolution by nondisciplinary financial penalty be extended~~ A licensee does not have the right to have a case resolved by nondisciplinary financial penalty if the Board does not extend an offer to resolve it in that manner."

9. **Comment:** One commenter stated a concern that section XI, 79.1, pertaining to Rules for Remote Hearings, that provides the Board/Board Hearing Officer with the sole discretion to determine whether a remote hearing be held in lieu of an in-person hearing.



**Response:** The Department understands and agrees with this concern and has amended Section XI to incorporate guidance based on Vermont Rule for Civil Procedure 43.1, Participation or Testimony by Video or Audio Conference.

“Upon order of the Board of Medical Practice, or a Hearing Officer acting on the Hearing Officer’s own behalf, a hearing may be held by telephone, video, or other electronic means (“Remote Hearings”). If a party objects to having all or part of a hearing conducted as a Remote Hearing the party must submit a written motion within 14 days, or sooner if specified in the order scheduling the remote hearing. In ruling on the objection, the Board or Hearing Officer shall consider the factors set forth in Vermont Rule of Civil Procedure 43.1. This section sets forth procedures for conducting Remote Hearings.”



To: Brendan Atwood, Vermont Department of Health

From: Jessa Barnard, Vermont Medical Society

Date: December 14, 2021

RE: Rules of the Board of Medical Practice – Public Comment

Thank you for soliciting comments regarding the proposed updates to the Rules of the Board of Medical Practice (“the Board”). These comments are submitted on behalf of the Vermont Medical Society (VMS), the largest physician membership organization in the state, representing over 2400 physicians, physician assistants and medical students across specialties, practice settings and geographic locations.

**Overall, VMS supports the proposed rule rewrites and believes they capture recent statutory changes that have been adopted by the legislature.**

**VMS submits the following comments for consideration:**

- (1) Section 23.2.3 (all sections refer to proposed new section numbering): Continuing Medical Education

VMS’ understanding of the intent of this section is that it would allow the Board to designate certain courses as meeting the Board’s continuing education credits required for physician licensing even if the course is not accredited for CME or carry AMA PRA Category 1 Credit. VMS supports this proposal. To avoid any confusion, VMS would suggest clarifying edits that the course may meet Board requirements even if it does not carry the accredited “CME” designation, such as:

*Certain activities sponsored by the Board may qualify for Board-required CME credit even if not accredited or designed as AMA PRA Category 1 activities. ~~If CME credit is available~~ If the course meets Board-required CME requirements, it will be specifically stated by the Board.*

- (2) Section 27.1: Practice agreement requirements.

Section 27 states generally the requirements for physician assistant practice agreements and that such agreements must meet the requirements of 26 V.S.A. § 1735a. For clarity and consistency, VMS requests that the Rules incorporate the language from 26 VSA § 1735a (f) that the practice agreement may be filed with the Board electronically at the option of the physician assistant. This suggestion was supported by the Board at the Board’s July meeting.

- (3) Section 27.4: Submission of a New Practice Agreement upon Employment Changes

VMS finds the statement in this section unnecessary and confusing that “There must be a practice agreement that applies to each practice setting.” This requirement could be read

that there must be a new and separate practice agreement for every practice *site*, which VMS would oppose and we do not believe the Board intends. The section already states clearly that a new practice agreement must be submitted for each employer, when adding a new employer, or if there are changes to prior practice agreement restrictions. If there are other situations in which a new practice agreement is contemplated, such as a change in specialty, this should be explicitly stated rather than referring to a new agreement for "each practice setting." Otherwise, VMS suggests that the quoted sentence above could be removed from section 27.4.

(4) Section 27. Submission of a New Practice Agreement Upon Unavailability of Participating Physician

This section states that when "a physician assistant's participating physician becomes unavailable and is expected to be unavailable for 30 days or more in any circumstances other than as described in 26.5, the physician assistant must submit a new practice agreement with a participating physician and may not practice after the participating physician becomes unavailable." There are many circumstances under which a PA may not become immediately aware that his/her participating physician is unavailable or will remain unavailable for 30 days or more. VMS requests that this language be modified to reflect that it becomes effective upon the PA learning that his/her participating physician is and will remain unavailable. For example:

*When a physician assistant ~~s~~ becomes aware that the PA's participating physician has becomes unavailable and is expected to be unavailable for 30 days or more in any circumstances other than as described in 26.5, the physician assistant must submit a new practice agreement with a participating physician and may not practice until the new practice agreement has been submitted to the Board. ~~after the participating physician becomes unavailable.~~*

(5) Section 70.0: Nondisciplinary Financial Penalties

This section states that "A licensee does not have the right to request that an offer for resolution by nondisciplinary financial penalty be extended." This sentence is confusing and also seems unnecessary given the opening sentence of this section and underlying statute are both clear that nondisciplinary financial penalties are only granted at the discretion of the Board. However, it is unclear from this language if the Board is stating that there is no right to a financial penalty in lieu of discipline or if there is no ability of a licensee to even ask if a nondisciplinary financial penalty would apply in their situation or propose the option to the Board. This section would be made clearer by removing this sentence or clarifying the intent. VMS would support a clarification that no licensee has the right to a nondisciplinary penalty in lieu of discipline but would have concern with a limitation that licensees may not even propose a resolution by nondisciplinary financial penalty.

(6) Section 79.1: Rules for Remote Hearings – Scope

VMS does not have opposition to the procedural rules proposed by the Board in section 80.0 for holding remote hearings and understands that these sections are adopting on a permanent basis the emergency rules that have been in place during the COVID-19 pandemic. Remote hearings have been an important tool to keep disciplinary actions moving forward during the pandemic and VMS understands that the Board wants to retain the flexibility to pivot to remote hearings when necessary. That said, on behalf of licensees and based on feedback from several attorneys who represent licensees, VMS believes that remote hearings are not preferable and as a general matter should not replace in-person hearings. The importance of seeing and hearing witnesses live cannot be overstated. With a physician's career on the line, witnesses should typically be seen and heard in-person. Cross examination of witnesses is not nearly as effective when remote compared to in-person examination. The use of exhibits is cumbersome and can be quite inefficient. For these reasons, VMS would support retaining the procedures as proposed in Section IX but only if 79.1 is modified to allow remote hearings upon stipulated agreement by both the Board and the licensee rather than unilaterally "Upon order of the Board of Medical Practice, or a Hearing Officer acting on the Hearing Officer's own behalf."

Thank you for considering VMS's comments and please let me know if I can answer any additional questions.

## Weill, Natalie

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**From:** Paul Dunn <paulrdunn@icloud.com>  
**Sent:** Tuesday, November 9, 2021 10:03 AM  
**To:** AHS - VDH Rules  
**Cc:** Katie Noel; Stacey McKenna; Paul Dunn; Vermont Aaa  
**Subject:** VDH Rule Changes and Certified Anesthesiologist Assistants

**EXTERNAL SENDER: Do not open attachments or click on links unless you recognize and trust the sender.**

To whom it may concern,

My name is Paul Dunn and I am practicing certified anesthesiologist assistant in the State of Vermont and the Vice-President of the Vermont Academy of Anesthesiologist Assistants (VTAAA).

I am sending this email in regard to proposed 2021 VDH rule changes, which I have outlined below, and with which I hope you can help.

- Could you include the VTAAA in communications and rule development as a stakeholder similar to other professional societies (i.e. the Vermont Medical Society and the Physician Assistant Academy of Vermont)?
  - Our academies email address is: [VermontAAA@gmail.com](mailto:VermontAAA@gmail.com)
- Could you add CAA means Certified Anesthesiologist Assistant similar to:

2.23 "PA" means physician assistant in the proposed rules?
- Certified Anesthesiologist Assistants currently need a separate license for each facility they work at. Is there any way to bring CAAs into alignment with PAs where there is a practice agreement needed for each site but an overall Vermont license that becomes inactive if no practice agreement is present? Similar to:

26.0 Physician Assistant Renewal. In addition to the general renewal requirements set forth in section 7.0 f or renewal, a physician assistant must submit: current contract; updated Delegation Agreement; updated Primary Supervisor Form; and, if applicable, updated Secondary Supervisor Form(s). A physician assistant who is not in active practice may renew an inoperable license, but cannot practice until those documents are filed with and accept a practice agreement with a participating physician is received by the Board. Each practice agreement between a physician assistant and a participating physician must be reviewed, and if necessary updated, during the 30 days preceding submission of the physician assistant's renewal application. The physician assistant shall maintain documentation to show the date on which the practice agreement was reviewed.

Thank you for your help in resolving these issues

Best regards,

Paul Dunn MHSc, MS, CAA, Vice-President of the Vermont Academy of Anesthesiologist Assistants

**To:** Brendan Atwood, Vermont Department of Health  
**From:** Physician Assistant Academy of Vermont  
**Date:** Wednesday, December 15, 2021  
**RE:** Rules of Board of Medical Practice – Public Comment

Thank you for asking for comments from PAAV regarding the Board of Medical Practice Rules update. We have a couple of recommendations on clarifying edits. Overall, we appreciate the work that has gone into the proposed rules update.

**PAAV submits the following comments for consideration:**

**1. Section 26.0: PA Renewal**

"A PA who is not in active practice may renew an inoperable license, but cannot practice until a practice agreement with a participating physician is received by the Board. Each practice agreement between a PA and a participating physician must be reviewed, and if necessary updated during the 30 days preceding submission of the PA's renewal application. The PA shall maintain documentation to show the date on which the practice agreement was reviewed."

- PAAV recommends changing the time line to "during the 3 months preceding submission of the PA's renewal application." instead because the typical time frame for licensure renewal from the notification from the Board to when the application is due is approximately 3 months (October to January.)

**2. Section 27.3: Practice Agreement Requirements**

"A practice agreement must be reviewed by the PA and the participating physician or another qualified physician, as provided by 26 V.S.A. 1735a(d), no less frequently than at the time of the PA's license renewal. The review must be documented in writing at the time that it is completed and signed by the PA and reviewing physician. If changes are made to the practice agreement the revised agreement must be signed by the PA and participating physician and submitted to the Board

Submission of a new practice agreement upon Employment changes. A new practice agreement must be received by the Board before a PA may practice after a change in employment. A new practice agreement must be submitted to the Board whenever a PA begins practice with a new employer. This includes both leaving one employment and beginning at another and adding a new employer while continuing to work for a current employer. "There must be a practice agreement that applies to each practice setting." If a PA's practice agreement includes restrictions that limit its application to a new practice setting with the same employer, such as by geographic location, by department or by scope of practice allowed, a new practice agreement must be submitted for a new practice setting beyond those restrictions.

- PAAV recommends adding additional clarification to this statement to indicate that "Multiple locations can be on one practice agreement if under the same specialty and/or management." This is to prevent interpretation of this line to mean every physical practice setting needs a separate practice agreement.

3. **Section 27.6:**

"Submission of a new practice agreement upon unavailability of participating physician—  
General Rule. When a PA's participating physician becomes unavailable and is expected to be unavailable for 30 days or more in any circumstance other than described in 27.4, the PA must submit a new practice agreement with a participating physician "and may not practice after the participating physician becomes unavailable."

- PAAV would recommend eliminating what is in italic and changing to "as soon as it is known that the participating physician will be out for 30 days or more." If something causes a physician to become unavailable, it may not always be immediately known so it places a PA out of compliance with the Board's rules as soon as an event occurs making a participating physician unavailable and likely well before a PA is even aware that the event has occurred.

Thank you for considering our comments. We are happy to answer any questions you may have.



## Chapter 1 – Board Rules

## Subchapter 1 –

**RULES OF THE BOARD OF MEDICAL PRACTICE****SECTION I. GENERAL PROVISIONS****1.0 Overview****1.1 Purpose**

The purpose of the Board of Medical Practice is to protect the public health, safety and welfare. The Board does this by setting standards for issuing licenses and certifications, by licensing and certifying only qualified applicants, by investigating unprofessional conduct and unlicensed practice of medicine, by disciplining and regulating the practices of license and certificate holders, and by providing licensees with guidelines, policies, and continuing medical education.

**1.2 Authority**

This rule is adopted pursuant to 26 V.S.A. § 1351(e) and 3 V.S.A. § 831(d).

**1.3 Scope**

This rule establishes requirements for the licensing or certification, and regulation of physicians, physician assistants, podiatrists, anesthesiologist assistants, and radiologist assistants by the Board of Medical Practice.

**2.0 Definitions**

**2.1** "ABMS" means the American Board of Medical Specialties.

**2.2** "Accredited Medical School" means a medical school accredited by the LCME or the Canadian equivalent.

**2.3** "ACGME" means the Accreditation Council for Graduate Medical Education.

**2.4** "AMA" means the American Medical Association.

**2.5** "Board" means the Board of Medical Practice created by 26 V.S.A. Chapter 23.

**2.6** "Board-approved medical school" means a medical school that:

**2.6.1** Appears on the official California Recognized Medical Schools list; or

- 2.6.2 A foreign medical school that has been accredited under the system for medical school accreditation established by the Educational Commission for Foreign Medical Graduates (ECFMG) and deemed to meet the minimum requirements substantially equivalent to the requirements of medical schools accredited by the Liaison Committee on Medical Education or the Committee on Accreditation of Canadian Medical Schools; or
- 2.6.3 A medical school that was approved as provided by the standards established by the United States National Committee on Foreign Medical Education and Accreditation Certification, but only if the applicant holds American Board of Medical Specialties board certification, or meets all eligibility requirements for such certification and is only lacking current licensure.
- 2.7 "CACMS" means the Committee on Accreditation of Canadian Medical Schools.
- 2.8 "CFPC" means the College of Family Physicians of Canada.
- 2.9 "CME" means continuing medical education as defined by the Accreditation Council for Continuing Medical Education (ACCME).
- 2.10 "CPME" means Council on Podiatric Medical Education of the American Podiatric Medical Association.
- ~~2.112.10~~ "Delegation Agreement" means a document identifying the medical acts that the PA may perform pursuant to the delegation by the primary supervising physician and detailing the means by which supervision will occur.
- 2.122.11 "ECFMG" means the Educational Commission for Foreign Medical Graduates.
- 2.132.12 "Fifth pathway" means a program of medical education that meets the following requirements:
- ~~2.13.12.12.1~~ Completion of two years of pre-medical education in a college or university of the United States.
- ~~2.13.22.12.2~~ Completion of all the formal requirements for the degree corresponding to doctor of medicine except internship and social service in a medical school outside the United States which is recognized by the World Health Organization.
- ~~2.13.32.12.3~~ Completion of one academic year of supervised clinical training sponsored by an approved medical school in the United States or Canada.
- ~~2.13.42.12.4~~ Completion of one year of graduate medical education in a program approved by the Liaison Committee on Graduate Medical Education of the American Medical Association.
- 2.142.13 "FLEX" means the Federation Licensing Examination.
- 2.152.14 "Foreign medical school" means a legally chartered medical school in a sovereign state other than the United States or Canada.

- ~~2.162.15~~ "Immediate family" means the following: a spouse (or spousal equivalent), parent, grand-parent, child, sibling, parent-in-law, son/daughter-in-law, brother/sister-in-law, step-parent, step-child, step-sibling, or any other person who is permanently residing in the same residence as the licensee. The listed familial relationships do not require residing in the same residence.
- ~~2.172.16~~ "Lapsed license" means a license that has expired or is no longer valid due to the licensee's failure to complete the requirements for renewal of that license.
- ~~2.182.17~~ "Limited temporary license" means a license issued for the purpose of completing post-graduate training and allows the licensee to practice under the supervision and control of a Vermont-licensed physician in an ACGME-accredited training program.
- ~~2.192.18~~ "LCME" means the Liaison Committee on Medical Education of the AMA.
- ~~2.202.19~~ "LMCC" means the Licentiate of the Medical Council of Canada.
- ~~2.212.20~~ "MCCQE" means Medical Council of Canada Qualifying Examination.
- ~~2.222.21~~ "National Boards" means the examination given by the National Board of Medical Examiners.
- ~~2.232.22~~ "NCCPA" means National Commission for the Certification of Physician Assistants.
- ~~2.242.23~~ "PA" means physician assistant.
- ~~2.24~~ "Participating Physician" means a medical doctor or osteopathic physician who holds a full Vermont medical license, who meets the requirements of Vermont law and ~~these rules~~ this rule to be the Participating Physician for a PA, and who has executed a practice agreement ~~Practice Agreement~~ to act as the Participating Physician for a Vermont PA.
- ~~2.25~~ "Physician" means a medical doctor or holder of an equivalent degree that qualifies a person to be licensed as an allopathic physician. It does not mean doctor of osteopathy when used in ~~these~~ this rules unless specified.
- ~~2.26~~ "PMLexis" means the Podiatric Medical Licensure Examination for States.
- ~~2.27~~ "Primary supervising physician" means a Vermont-licensed Medical Doctor or Doctor of Osteopathy who supervises the practice of a PA in accordance with ~~these rules~~.
- ~~2.282.27~~ "Professional" means a member of one of the health care professions licensed by the Board: medical doctor; physician assistant; podiatrist; anesthesiologist assistant, and radiologist assistant.
- ~~2.292.28~~ "RCPSC" means the Royal College of Physicians and Surgeons of Canada, which is the accrediting body for postgraduate medical education in Canada.

~~2.30~~ "Referral" means sending a patient to a non-supervising practitioner for diagnosis and treatment.

~~2.31~~2.29 "RRC" means the Residency Review Committee of the ACGME.

~~2.32~~ "Secondary supervising physician" means a Vermont licensed Medical Doctor or Doctor of Osteopathy who supervises the practice of a PA in accordance with these rules when the primary supervising physician is unavailable.

~~2.33~~2.30 "Specialty Board certification" means the certification granted upon successfully completing the educational and examination requirements of a specialty board of the American Board of Medical Specialties.

~~2.34~~ "Supervision" means, with regard to physician assistants, the direction provided and review performed by the supervising physician of medical services provided by a physician assistant. The supervising physician need not be present on the premises where the physician assistant renders medical services and may provide supervision by telephone or electronic means of communication.

~~2.35~~2.31 "USMLE" means the United States Medical Licensing Examination.

~~2.36~~2.32 "Verification" means documentation that is provided to the Board that comes directly from the original issuing authority, or recognized successor entity, in a format acceptable to the Board, or from the Federation Credential Verification Service (FCVS) or other record repository as may be recognized by the Board.

~~2.37~~2.33 "V.S.A." means Vermont Statutes Annotated.

### 3.0 Hearings Before the Board

~~3.1~~ **Hearing Committee Panel:** The Board chair/Executive Director may designate a hearing committee constituting less than a quorum/panel of at least no fewer than 3 members, with a minimum of one public member and one physician member of the Board, to conduct hearings which that would otherwise be heard by the full Board/hearing panel. When a hearing is conducted by a hearing committee of the Board/panel, the committee/panel shall report its findings and conclusions to the Full Board Hearing Panel within 60 days of the conclusion of the hearing unless the Board grants an extension. The committee's report shall be considered at a hearing of the Board.

~~3.2~~ **Full Board Hearing Panel:** Hearings before the Board require five members, including at least one public member and at least one physician member. Members of a hearing committee/panel designated under section 26 V.S.A. § ~~1355~~1372 shall not participate in or be present during deliberations of the Board but may be present for all other parts of the hearing.

~~3.3~~ Hearings shall be open to the public, except when required or permitted to be closed pursuant to law.

#### 4.0 Applicant's Right to a Written Decision

- 4.1 The Board must document, in writing, all decisions on whether an applicant is granted or denied a license or certification. The Board may stay its decision on an application for a license or certification from an applicant who is the subject of an unresolved licensing board investigation or a criminal complaint in another jurisdiction that involves or relates to the practitioner's care of patients or fitness to practice medicine. If an application is stayed, the Board may require the applicant to update some or all parts of the application when the stay is removed and the application is to be considered.
- 4.2 Whenever the Board intends to deny an applicant a license, it shall first issue a Notice of Intent to ~~Revoke~~ Deny, which shall include:
- 4.2.1 The specific reasons for the license denial;
- 4.2.2 Notice that the applicant has the right to request a hearing at which the Board shall review the preliminary decision, and that such request must be filed with the Board within 30 days of the date the decision was sent to the applicant.
- ~~4.2.2.3~~ If the applicant requests a hearing in writing, a hearing panel shall be appointed as provided by 26 V.S.A. § 1372 and 26 V.S.A. § 1398.
- ~~4.34.4~~ At the hearing to review the preliminary decision to deny the license application, the applicant shall be given the opportunity to show compliance with the licensing requirements;
- ~~4.44.5~~ After the hearing, the Board shall affirm or reverse the preliminary decision, and shall issue a final written decision and order setting forth its reasons for the decision. The decision and order shall be signed by the chair or vice-chair of the Board and the Board shall enter the order. A decision and order is effective upon entry.
- ~~4.54.6~~ Notice of both the preliminary decision and the final decision and order shall be sent to the applicant by certified mail.

#### 5.0 Applicant's Right to Appeal

A party aggrieved by a final decision of the Board may, within 30 days of the decision, appeal that decision to the Vermont Supreme Court, as provided by 26 V.S.A. § 1367, by filing a notice of appeal with the Executive Director of the Vermont Board of Medical Practice Practice, as provided by 26 V.S.A. § 1367 and the Vermont Rules of Appellate Procedure. For further rules concerning appeals, see 3 V.S.A, ch. 25 Administrative Procedures and the Vermont Rules of Appellate Procedure.

#### 6.0 Fees

- 6.1 Application fees are established in 26 V.S.A. §§ 374, 378, 1401a, 1662, 1740, and 2862.

## **6.2 Physician fee waivers.**

**6.2.1 Pro Bono Clinic Waiver.** A physician who will limit practice in Vermont to providing pro bono services at a Board-recognized free or reduced fee health care clinic, as provided by 26 V.S.A. § 1401a(c), shall meet all license requirements, but may apply for a waiver of licensing fee, by submitting a fee waiver request to the Board which shall include the following information:

**6.2.1.1** The name and address of the free or reduced fee health clinic(s) where the pro bono services shall be performed;

**6.2.1.2** Certification that the licensee shall perform only pro bono services in Vermont, and shall only perform such services at the listed clinics;

**6.2.1.3** The clinic director's certification that the licensee shall perform only pro bono services at the clinic.

**6.2.2 Medical Reserve Corps Waiver.** A physician who will limit practice in Vermont to service with the Medical Reserve Corps, as provided in 26 V.S.A. § 1401a(c) shall meet all license requirements, but may apply for a waiver of licensing fee, by submitting a fee waiver request to the Board using the appropriate form.

**6.2.3** A physician granted this a waiver request must reapply for the waiver at each biennial renewal. A physician may obtain a fee waiver under each basis; if volunteering under each basis, the necessary documentation must be submitted for each. The licensee's failure to follow the terms of the certifications submitted or the provisions of this rule may constitute unprofessional conduct as set forth in 26 V.S.A. §§ 1354 and 1398 and may result in disciplinary action.

## **7.0 Renewing a License or Certification**

**7.1** Licenses and certifications are renewed on a fixed biennial schedule. A professional must renew his or her license or certification before it lapses. The date on which a license or certification shall lapse is printed on it. 90 days before such date, the Board will provide each professional with notice of renewal to the email address last provided to the Board. If a professional does not complete the renewal application, submit all required documentation, and pay the renewal fee to the Board by the date on which the license or certification shall lapse, the license or certification will lapse automatically.

**7.2** A professional whose initial license or certification is issued within 90 days of the next-occurring renewal date, will not be required to renew or pay the renewal fee. Instead, the license or certification will be issued with an expiration date at the end of the next full period of licensure or certification. A professional who is issued an initial license or certification more than 90 days prior to the next-

occurring expiration date will be required to renew and pay the renewal fee or the license or certification will lapse.

- 7.3 Professionals have a continuing obligation during each two-year renewal period to promptly notify the Board of any change to the answers on the initial or renewal application last filed with the Board, including but not limited to disciplinary or other action limiting or conditioning the license, certification, or ability to practice in any jurisdiction. Failure to do so may subject the professional to disciplinary action by the Board.
- 7.4 Limited training licenses (LTLs) are issued on a fixed annual schedule. Otherwise, these provisions apply to holders of LTLs.
- 7.5 Additionally, specific requirements for renewal as a physician assistant, radiologist assistant, or anesthesiologist assistant are listed in the sections specific to those professions.

## **8.0 Lapsed Licenses or Certifications**

If a license or certification has not been renewed by the required date, it lapses. A professional regulated by the Board may not legally practice in Vermont after a license or certification has lapsed. The professional must halt practice immediately and completely until the license or certification has been reinstated.

## **9.0 Reinstatement of a License or Certification**

- 9.1 Reinstating a License or Certification after It Has Been Lapsed for ~~Less~~ fewer Than One Year (364 days or ~~less~~ fewer).

- 9.1.1 To seek reinstatement after failing to renew, a professional must complete in full the renewal application and tender it to the Board with any required documentation and a late fee, in addition to the fee required for renewal, within a year of lapsing. The Board may seek or request such additional information as it deems needed to make a determination as to the renewal application. The Board may deny the renewal of a license or certification on grounds of unprofessional conduct as set forth under Vermont law, after notice and opportunity to be heard has been provided to the professional.

- 9.2 Reinstating a License or Certification after It Has Lapsed for One Year or More (365 days or more).

- 9.2.1 If a license or certification has been lapsed for one year or more the professional must complete a reinstatement application in full and pay the application fee for an initial application. The reinstatement application requires additional information beyond that required in the standard renewal application. This includes but is not limited to the requirement to submit a chronological accounting of all professional activities in other

jurisdictions during the period the Vermont license or certification was lapsed.

9.2.2 The professional submitting a renewal for a license or certification lapsed for one year or more must provide:

9.2.2.1 For physicians or any other professional who held hospital privileges, a form completed by the chief of staff of the hospital where privileges were most recently held during the period when the Vermont license was lapsed;

9.2.2.2 For professionals who are required to practice under supervision, a form completed by each supervisor who provided supervision during the period when the Vermont license or certification was lapsed; and

9.2.2.3 A verification from each state in which the professional held an active license or certification during the period when the Vermont license or certification was lapsed.

9.2.3 Reinstatement may be denied on grounds of unprofessional conduct as set forth under Vermont law or for other good cause, after notice and opportunity to be heard has been provided to the professional. The provisions of section 4.0 regarding license denial apply to denial of reinstatement.

## **10.0 Stale Applications**

**10.1** An application that becomes stale under these provisions is terminated without Board action and without refund of any fees paid.

**10.2** An application becomes stale if six months pass from the time that the applicant is notified that additional information or documentation is needed and the information or documentation has not been provided. Once an application has become stale, verifications and documentation as determined by the Board must be resubmitted and the fee must be paid again if the applicant desires to resume the application process.

**10.3** An application that has been forwarded to the licensing committee may be determined by the licensing committee to be incomplete. An application becomes stale while before the licensing committee if the licensing committee requests additional information and the information is not submitted within sixty days. An applicant may request more time from the licensing committee, which shall rule finally on all matters of whether the application was completed in a timely matter.

## **11.0 Enforcement of Child Support**

The Board licenses or certifies five professions: Physicians, Physician Assistants, Podiatrists, Anesthesiologist Assistants, and Radiologist Assistants. Per 15 V.S.A. § 795,



the Board may not issue or renew a professional license or certification to practice these professions or be a trainee if the applicant is under an obligation to pay child support and is not in good standing or in full compliance with a plan to pay the child support due. The Board requires that each applicant for the issuance or renewal of a license or certification sign a statement that the applicant is not under an obligation to pay child support or is in good standing with respect to or in full compliance with a plan to pay any and all child support payable under a support order as of the date the application is filed.

## **12.0 Tax Compliance**

The Board licenses or certifies five professions: Physicians, Physician Assistants, Podiatrists, Anesthesiologist Assistants, and Radiologist Assistants. Per 32 V.S.A. § 3113, the Board may not issue or renew a professional license or certification to practice those professions or be a trainee unless the applicant is in good standing with respect to or in full compliance with a plan to pay any and all taxes due. The Board requires that each applicant for the issuance or renewal of a license or certification sign a statement that the applicant is in good standing with respect to or in full compliance with a plan to pay any and all taxes due.

## **13.0 Professional Standards.**

### **13.1 Change of Name or Address.**

All professionals are responsible for notifying the Board within 10 days of any change of name, mailing address, or telephone number. All professionals who hold a Vermont license or certification are required to keep the Board informed of a current email address; email is used to provide important notices to all professionals regulated by the Board. A professional who holds a Vermont license but who has not been engaged in practice in Vermont shall notify the Board at least 30 days in advance of the intended starting date of the Vermont practice.

### **13.2 Self-Prescribing and Prescribing for Family Members.**

13.2.1 Controlled Substances: It is unacceptable medical practice and unprofessional conduct for a licensee to prescribe or dispense controlled substances listed in US Drug Enforcement Agency ("D.E.A.") Schedules II, III, or IV for the licensee's own use. It also is unacceptable medical practice and unprofessional conduct for a licensee to prescribe or dispense Schedule II, III, or IV controlled substances to a member of the licensee's immediate family, as defined in subsection 2.16, except in a bona fide emergency, of short-term and unforeseeable character. Prescribing for self or immediate family members, as defined in ~~these Rules~~this rule, constitutes a violation of 26 V.S.A. § 1354.

13.2.2 Non-controlled Substances: It is discouraged for a licensee to prescribe or dispense non-controlled prescription substances for the licensee's own

use. It is also discouraged for licensee to prescribe or dispense non-controlled prescription substances to a member of the licensee's immediate family, as defined in subsection 2.16. Licensees who do prescribe non-controlled substances for their own use or that of a family member are required to meet all standards of appropriate care, including proper establishment of a professional relationship with the patient and maintenance of appropriate patient records.

- 13.3 Methadone Prescribing.** Federal law prohibits prescribing methadone outside of a certified opioid treatment program, unless it is prescribed or dispensed as an analgesic. A licensee must include the words "FOR PAIN" in a prescription for methadone.

## **-SECTION II. PHYSICIANS**

### **14.0 License Required**

No one may practice medicine in the state unless licensed by the Board, or when exempt under the provisions contained in 26 V.S.A. § 1313. Before allowing a physician who is not licensed in Vermont to practice pursuant to the exemption stated in 26 V.S.A. § 1313(a)(4), a medical school or teaching hospital must first verify through primary source verification the physician's qualifications and credentials, including that the physician has a valid, unrestricted license to practice medicine in the current jurisdiction of practice. Such documentation shall be submitted to the Executive Director for review; the Executive Director may approve the exemption or may elect to refer the matter to the Licensing Committee and/or Board. If referred directly to the Board, there is no requirement for review by the Licensing Committee.

### **15.0 Requirements for Licensing**

- 15.1** In order to be granted a license to practice medicine an applicant must meet the following eligibility requirements:

- 15.1.1 At least 18 years of age;
- 15.1.2 Competent in speaking, writing, and reading the English language;
- 15.1.3 Completed high school and at least two years of college or the equivalent;
- 15.1.4 A graduate of a Board-approved medical school, or a medical school accredited by the LCME or CACMS;
- 15.1.5 Meets the Board's criteria for Postgraduate Training;

- 15.1.6 Meets the Board's criteria for License by Examination; or License by Appointment to the faculty of a Vermont medical college; and
- 15.1.7 Meets requirement for moral character and professional competence.
- 15.2** For each applicant for licensure as a physician the Board must receive, in a form satisfactory to the Board:
- 15.2.1 A complete online application;
  - 15.2.2 Proof of identity and that the applicant is at least 18 years of age as evidenced by a certified birth certificate or a copy of a naturalization certificate;
  - 15.2.3 If applicable, an ECFMG certificate. An ECFMG certificate is required if an applicant graduated from a medical school outside of the United States or Canada, unless the applicant successfully completed a fifth pathway program.
  - 15.2.4 Evidence of completion of high school and at least two years of college;
  - 15.2.5 For each medical school attended, the Uniform Application Medical School Verification Form for primary source documentation of graduation from a Board-approved medical school or a medical school accredited by the LCME or CACMS;
  - 15.2.6 For each postgraduate training program attended, the Uniform Application Postgraduate Training Verification Form for primary source documentation of all postgraduate training;
  - 15.2.7 Verification of every medical license ever held in any state, territory, or province to practice medicine at any level, including permanent, temporary, and training licenses.
  - 15.2.8 Verification of medical licensing examination results; sent directly by the applicable examining authority in accordance with the Board of Medical Practice examination requirements;
  - 15.2.9 Board of Medical Practice Reference Forms completed and submitted directly by the chief of service (or equivalent) and two other active physician staff members of the hospital where the applicant currently holds, or most recently held, privileges. If an applicant has not held privileges at a hospital within two years of the date of submission of the application, or cannot provide references as indicated, the Board in its discretion may accept references from other physicians who have knowledge of the applicant's moral character and professional competence. An applicant shall indicate in the application if asking the Board to accept references that do not meet the above-stated standard;.
  - 15.2.10 The Uniform Application Affidavit and Authorization for Release of Information Form;

- 15.2.11 American Medical Association Profile. This must be a current Profile issued within 60 days of submission of the application;
- 15.2.12 National Practitioner Data Bank Self-Query Report. This must be a current Self-Query Report issued within 60 days of submission of the application. Information about obtaining a Self-Query Report is in the instructions to the application;
- 15.2.13 The applicant's CV (curriculum vitae) or résumé; and
- 15.2.14 If specialty board-certified, a copy of the specialty board certificate.
- 15.3 All applicants must submit a completed Board application package, provide required documentation as specified in the application form or requested by the Board, and pay the application fee. Documents submitted with the application become part of the official record and will not be returned.
- 15.4 At the discretion of the licensing committee or the Board any applicant may be required to be interviewed by a Board member.

#### **16.0 Satisfaction of Licensing Requirements by Practice in Another United States Jurisdiction**

**16.1** A physician can meet the licensing requirements stated in 15.1.2 and 15.1.6 by demonstrating that:

**16.1.1** they have been practicing medicine full-time in another United States jurisdiction while continuously holding a full, unrestricted, and unlimited license in good standing for at least three years preceding the day on which the Vermont license is to be granted; and

**16.1.2** they meet the education and training requirements stated in 26 V.S.A. § 1395(a).

**16.2** For each applicant for licensure as a physician under 26 V.S.A. § 1395(a) the Board must receive, in a form satisfactory to the Board:

**16.2.1** A complete online application;

**16.2.2** Proof of identity and that the applicant is at least 18 years of age as evidenced by a certified birth certificate or a copy of a naturalization certificate;

**16.2.3** For each medical school attended, the Uniform Application Medical School Verification Form for primary source documentation of graduation from a Board-approved medical school or a medical school accredited by the LCME or CACMS;

- 16.2.4 For each postgraduate training program attended, the Uniform Application Postgraduate Training Verification Form for primary source documentation of all postgraduate training;
- 16.2.5 Verification of the medical license that the applicant relies upon to qualify to apply under the endorsement procedure;
- 16.2.6 Board of Medical Practice Reference Forms completed and submitted directly by the chief of service (or equivalent) and two other active physician staff members of the hospital where the applicant currently holds, or most recently held, privileges. If an applicant has not held privileges at a hospital within two years of the date of submission of the application, or cannot provide references as indicated, the Board in its discretion may accept references from other physicians who have knowledge of the applicant's moral character and professional competence. An applicant shall indicate in the application if asking the Board to accept references that do not meet the above-stated standard.
- 16.2.7 The Uniform Application Affidavit and Authorization for Release of Information Form;
- 16.2.8 American Medical Association Profile. This must be a current Profile issued within 60 days of submission of the application;
- 16.2.9 National Practitioner Data Bank Self-Query Report. This must be a current Self-Query Report issued within 60 days of submission of the application. Information about obtaining a Self-Query Report is in the instructions to the application;
- 16.2.10 The applicant's CV (curriculum vitae) or résumé; and
- 16.2.11 If specialty board-certified, a copy of the specialty board certificate.
- 16.3 All applicants must submit a completed Board endorsement application package, provide required documentation as specified in the application form or requested by the Board, and pay the application fee. Documents submitted with the application become part of the official record and will not be returned.
- 16.4 At the discretion of the licensing committee or the Board any applicant may be required to be interviewed by a Board member.

#### **16.017.0 License by Examination**

- 16.117.1 All applicants entering the examination system after December 31, 1994 must use and pass the USMLE three-step sequence. Primary source documentation of a passing grade on each of the three USMLE steps is required. All three steps must be completed within seven (7) years of the first examination attempt, or ten (10) years if the applicant completed an MD/PhD or equivalent program. Applicants may retake USMLE Step I and II multiple times without limit until successful, subject to the time limit of seven or ten years. Applicants may retake USMLE Step III two times, for a total of three attempts. Additional

attempts, even if successful, do not qualify the applicant for a Vermont license unless granted a waiver as provided in section 176.2 below.

~~16.2~~17.2 Applicants who do not meet the requirement to have passed all three Steps of the USMLE within a seven-year period, or ten-year period for an MD/PhD applicant, or have required more than three attempts to pass Step III may apply for a waiver of the requirement if they meet all the following criteria:

~~16.2.1~~17.2.1 Hold a full unrestricted license in another U.S. or Canadian jurisdiction;

~~16.2.2~~17.2.2 Hold an active ABMS, RCPSC, or CFPC specialty certification; and

~~16.2.3~~17.2.3 Have successfully completed an ACGME, RCPSC, or CFPC approved post-graduate training program.

~~16.3~~17.3 Applicants who first took a medical licensing exam on or before December 31, 1994, must satisfy at least one of the following criteria, as evidenced by primary source documentation:

~~16.3.1~~17.3.1 Applicants who successfully completed the National Boards Parts 1, 2, and 3 or FLEX Component 1 and 2 with a grade of at least 75 on all segments of either exam meet the examination criteria of the Board. All segments of either exam must have been completed within seven (7) years. The final clinical segment (Part 3 or Component 2) must have been passed on the first or second attempt to qualify for a Vermont license; or

~~16.3.2~~17.3.2 Applicants who entered, but did not complete, either the NBME or FLEX sequences before the discontinuance of FLEX or National Boards may combine some parts (components) from the two discontinued exam systems with USMLE for completion of an acceptable examination sequence. Each of the following combinations are acceptable:

(1)	NBME Part I or USMLE Step 1	plus	NBME Part II or USMLE Step 2	plus	NBME Part III or USMLE Step 3
OR					
(2)	FLEX Component I	plus	USMLE Step 3		
OR					
(3)	NBME Part I Or USMLE Step 1	plus	NBME Part II Or USMLE Step 2	plus	FLEX Component 2

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~~16.3.3~~17.3.3 Applicants who took and passed a medical licensing examination administered by one of the United States or its Territories with a minimum passing grade of 75% meet the examination requirements.

~~16.3.4~~17.3.4 Graduates of Canadian medical schools, in addition to the above examination options, can qualify for a Vermont license by successfully passing the MCCQE, Part I and Part II.

#### ~~17.0~~18.0 **License by Faculty Appointment**

The Board may license without examination a resident of a foreign country who is a licensed physician in good standing in the country of residence and who presents verifiable evidence of outstanding academic and clinical achievements and potential. To qualify for a Vermont license under this rule the applicant must present evidence that the applicant will be appointed to the University of Vermont College of Medicine full-time faculty at the rank of associate professor or higher. The license is issued only for the duration of the faculty appointment and is dependent on favorable faculty evaluations conducted according to the usual College of Medicine procedures. The licensee shall share these evaluations with the Board if requested.

#### ~~18.0~~19.0 **Postgraduate Training Requirements**

~~18.1~~19.1 Graduates of accredited U.S. or Canadian medical schools must have successfully completed two years of postgraduate training accredited by the ACGME, RCPSC, or CFPC. The training should be a progression of directed experience. Multiple first-year programs are not acceptable. Applicants who are currently licensed and in good standing in another U.S. or Canadian jurisdiction who were first licensed to practice in the U.S. or Canada on or before December 31, 1994, must have successfully completed one year of a postgraduate training program accredited by the ACGME, RCPSC, or CFPC.

~~18.2~~19.2 Graduates who hold a diploma from a Board-approved medical school outside of the United States or Canada must complete one of the following additional requirements:

~~18.2.1~~19.2.1 Three years of postgraduate training in programs approved by the ACGME, the RCPSC, or the CFPC. The training should be a progression of directed experience, preferably in a single program. Multiple first year programs are not acceptable;

~~18.2.2~~19.2.2 Specialty certification by a specialty board recognized by the ABMS, the RCPSC, or CFPC may be substituted for ~~198.4.1~~ or

~~18.2.3~~19.2.3 Three years as a full-time faculty member at or above the level of assistant professor in a clinical discipline in a medical school approved by the LCME, with documentation of the applicant's clinical training and competence and the school's method of evaluating that competence. The

evaluation must be part of the school's normal established procedure. The documentation shall include letters from the chairperson and two senior members of the applicant's department, special honors or awards that the applicant has achieved, and articles that the applicant has published in reputable medical journals or medical textbooks.

~~18.3~~19.3 Fifth Pathway graduates are not required to submit an ECFMG certificate and are eligible for a Vermont license after three years of postgraduate training in an ACGME, RCPSC, or CFPC-accredited program.

#### ~~19.0~~20.0 **Application to Take USMLE in Vermont**

~~19.1~~20.1 The Federation of State Medical Boards and the National Board of Medical Examiners administer the United States Medical Licensing Examination (USMLE). Applicants for Vermont licensure shall contact the Federation to apply to take the USMLE.

~~19.2~~20.2 General eligibility requirements to take USMLE Step 3 are:

~~19.2.1~~20.2.1 Certification of graduation from an accredited medical school in the United States or Canada, or a Board-approved medical school located in another country;

~~19.2.2~~20.2.2 Verification of ECFMG certificate if the applicant is a graduate of a medical school outside the United States or Canada. Fifth Pathway graduates are not required to submit an ECFMG certificate;

~~19.2.3~~20.2.3 Certification that the applicant has completed at least seven months of postgraduate training in a program approved by the ACGME, the RCPSC, or the CFPC.

#### ~~20.0~~21.0 **Limited Temporary License:**

~~20.1~~21.1 A limited temporary license is issued for the purpose of completing postgraduate training and allows the licensee to practice under the supervision and control of a Vermont-licensed physician in an ACGME-accredited training program. The applicant must be enrolled in an ACGME-accredited program of postgraduate training or in sub-specialty clinical fellowship training in an institution that has an accredited program in the parent specialty. A limited temporary license may be renewed or reissued, upon submission of a completed renewal application.

~~20.2~~21.2 Application for a limited temporary license shall include:

~~20.2.1~~21.2.1 Completed online application;

~~20.2.2~~21.2.2 The required fee;

~~20.2.3~~21.2.3 A copy of the applicant's medical school diploma;



~~20.2.4~~ 21.2.4 A supervising physician's/ program director's statement, acknowledging statutory responsibility for the applicant's negligent or wrongful acts or omissions;

~~20.2.5~~ 21.2.5 Direct verification of medical education;

~~20.2.6~~ 21.2.6 ECFMG if applicable;

~~20.2.7~~ 21.2.7 Verification of other state licensure;

~~20.2.8~~ 21.2.8 NPDB self-query; and

~~20.2.9~~ 21.2.9 Any additional forms or documentation required by the Board.

## **21.022.0 Professional Standards Specific to Physicians**

Grounds for disciplinary action are set forth in 26 V.S.A. §§ 1354, 1398, and 1739a. Additional grounds are set forth in 3 V.S.A. § 129a and 18 V.S.A. § 1852.

~~21.1~~ 21.22.1 Additional professional standards that apply to all professionals are in ~~Section 13.0 of these rules~~ this rule.

~~21.2~~ 21.22 Physician Assistant Supervision. Physicians supervising PAs shall adhere to requirements found in ~~27.0~~.

~~21.2.1~~ When the Board investigates practice by a PA who is unlicensed, or by a PA at a work site that has not been documented with the Board, the Board's investigation will include inquiry into which physician or physicians associated with the work site may be responsible.

~~21.2.2~~ If a Delegation Agreement has been signed by a physician as a supervising physician but not filed with the Board, the physician may be held accountable as a supervising physician regardless of the fact that the document has not been accepted by the Board.

~~21.2.3~~ If no Delegation Agreement has been prepared or signed, the Board will make inquiry as to which physician or physicians have supervisory or managerial authority for the location. In a physician-owned partnership in which no partner(s) are identified as having supervisory or managerial authority, any or all of the partners may be held accountable for the PA's practice.

~~21.3~~ 21.22.2 It is unprofessional conduct for a physician to delegate professional responsibilities to a person whom the physician knows or has reason to know is not qualified by training, experience, education, or licensing credentials to perform. See 26 V.S.A. § 1354(a)29. ~~In addition, under 26 V.S.A. § 1739a, inappropriate use of the services of a physician assistant by a physician constitutes unprofessional conduct by the physician.~~

~~21.4~~ 21.22.3 Requesting or Receiving a Prescription from a Physician Assistant ~~for whom the Physician Acts as Participating P~~ Supervised by the Physician. A physician shall not request or receive the dispensing of or a prescription for

controlled substances listed in D.E.A. Schedules II, III, or IV for the physician's own use from a physician assistant for whom the physician acts as participating physician, who is supervised by the physician.

~~21.5~~22.4 Requesting or Receiving a Prescription from an Advanced Practice Registered Nurse with Whom the Physician Has an Agreement to Act as the Collaborating Provider. A physician shall not request or receive the dispensing of or a prescription for controlled substances listed in D.E.A. Schedules II, III, or IV for the physician's own use from an advanced practice registered nurse with whom the physician has an agreement to act as the collaborating provider.

## ~~22.0~~23.0 **Continuing Medical Education**

### ~~22.1~~23.1 **Minimum Education Requirement - Hours and Subjects**

~~22.1.1~~23.1.1 Except as provided in the following subparagraphs Each physician applying for renewal of a license to practice medicine must ~~the completion of~~ at least thirty hours of qualifying CME during the most recent two-year licensing period.

~~22.1.1.1~~23.1.1.1 The licensee is not required to file documentation of CME that verifies completion at the time that it is reported, however, it is the licensee's responsibility to retain documentation for four years from the time the information is submitted to the Board.

~~22.1.1.2~~23.1.1.2 The Board may audit records of CME for up to four years from the time of submission; a licensee is required to promptly submit documentation of CME completion in response to a request from the Board.

~~22.1.2~~23.1.2 For physicians licensed in Vermont for the first time during the most recent two-year licensing period, if licensed in Vermont for less than one year, there is no requirement for CME at the time of the first renewal. If licensed for one year or more during that initial period of Vermont licensure, the licensee shall complete at least 15 hours of approved CME activity and those 15 hours shall include any subject-specific CME required by ~~these rules~~ this rule.

~~22.1.3~~23.1.3 Time is calculated from the date the license was approved by the Board until the date of expiration. Any physician who has not completed the required continuing medical education shall submit a make-up plan with a renewal application, as specified in this rule ~~these rules~~.

~~22.1.4~~23.1.4 Except for required subjects that are mandated by this rule ~~these rules~~, all CME hours completed in satisfaction of this requirement shall be designed to assure that the licensee has updated knowledge and skills within their own specialties and also has kept abreast of advances in other

fields for which patient referrals may be appropriate. A licensee's "own area of practice" shall not be interpreted narrowly; it is acknowledged that training in many other fields may be reasonably related to a practitioner's own specialties.

~~22.1.5~~ 23.1.5 Required Subject: Hospice, Palliative Care, Pain Management. 26 V.S.A. § 1400(b) mandates that the Board of Medical Practice shall require physician licensees to provide "evidence of current professional competence in recognizing the need for timely appropriate consultations and referrals to assure fully informed patient choice of treatment options, including treatments such as those offered by hospice, palliative care, and pain management services." Accordingly, all physician licensees who are required under this rule ~~these rules~~ to complete CME shall certify at the time of each renewal that at least one of the hours of qualifying CME activity has been on the topics of hospice, palliative care, or pain management services.

~~22.1.6~~ 23.1.6 Required Subject: Prescribing Controlled Substances.

All physician licensees who are required to certify completion of CME and who prescribe controlled substances shall certify at the time of each renewal that at least two hours of qualifying CME activity on controlled substances prescribing. The following topics must be covered, as required by Vermont law: abuse and diversion, safe use, and appropriate storage and disposal of controlled substances; the appropriate use of the Vermont Prescription Monitoring System; risk assessment for abuse or addiction; pharmacological and nonpharmacological alternatives to opioids for managing pain; medication tapering and cessation of the use of controlled substances; and relevant State and federal laws and regulations concerning the prescription of opioid controlled substances. Each licensee who is registered with the D.E.A. and who holds a D.E.A. number to prescribe controlled substances, or who has submitted a pending application for one, is presumed to prescribe controlled substances and must meet this requirement.

~~22.1.7~~ 23.1.7 Licensees who are not in active practice shall still complete CME, including all required subjects, to be relicensed. For purposes of subsection (b), a physician not in active practice may consider the last area of practice as the area of practice to which activity shall relate, or the activity may relate to any intended new area of practice.

~~22.1.8~~ 23.1.8 Licensees who are members of the armed forces and who are subject to a mobilization and/or deployment for all or part of a licensing cycle will be treated the same as licensees who are licensed for the first time during a licensing cycle. E.g., a licensee whose military mobilization/deployment covers a year or more is not required to complete CME for that cycle. A licensee whose military duties during the two-year cycle total less than one year shall be required to meet the CME requirement of at least 15 hours, including any required subjects.

~~22.1.9~~23.1.9 A licensee who allows a license to lapse by not timely applying for renewal shall certify completion of all CME that would have been required to remain licensed in order to be granted a renewal license.

## ~~22.2.2~~23.2 **Qualifying Continuing Medical Education Activities**

~~22.2.1~~23.2.1 Only CME activities that are approved for American Medical Association Physician's Recognition Award Category 1 Credit AMA PRA Category 1 Credit™ qualify as approved Vermont CME.

23.2.2 Credit for providing training. The Board accepts all AMA PRA Category 1 Credit™ activity. The AMA PRA program grants two hours of credit for each hour of training presented by a physician. The Board recognizes those credits the same as the AMA PRA program.

~~22.2.2~~23.2.3 Certain activities sponsored by the Board may qualify for CME credit ~~despite not being~~ even if not designated as AMA PRA Category 1 activities. If CME credit is available, it will be specifically stated ~~in~~ by the Board ~~announcements about the activity~~.

~~22.2.3~~23.2.4 Special Rule for holders of a full, unlimited license who are participants in a residency or fellowship program approved by a nationally-recognized body that approves graduate medical education (GME). Some physicians who are still in a GME program obtain full licensure in addition to a limited temporary license for training. As fully-licensed physicians, if licensed for a year or more (see Section 23.1.2) they must complete at least 15 hours of CME. If licensed the full period, they must complete 30 hours of CME. However, the Board will recognize participation in a GME program as qualifying for CME credit to the extent provided here.

~~22.2.3.1~~23.2.4.1 The licensee must have successfully completed the program or continue to be in good standing in the GME program throughout the licensing period to have GME count as CME.

~~22.2.3.2~~23.2.4.2 Successful completion of a year of full-time participation in an approved program during the two-year licensing period may count for 15 hours of CME to be used to satisfy a CME requirement for that licensing period. Licensees who wish to use participation in a GME program to satisfy part of the CME requirement shall submit a letter to the Board stating so and attesting to successful completion of the GME program year.

~~22.2.3.3~~23.2.4.3 GME students who are fully licensed must meet the subject-specific requirement for hospice, palliative care, or pain management services if fully licensed for a year or more. See section 23.1.5 ~~2.1.5~~. -GME students who are fully licensed for a year or more and who have applied for or hold a D.E.A. number

must satisfy the statutory requirement for two hours of CME on controlled substances prescribing. See Section 232.1.66.

### ~~22.3.23.3~~ **Make-Up Plans**

~~22.3.4~~23.3.1 Any physician who has not completed the minimum number of hours of CME, or who has not completed the required subject-specific training, as of the deadline for submission of license renewal applications, will not be granted a renewal license unless the application includes an acceptable make-up plan signed by the licensee. The Board Executive Director is authorized to review and determine if make-up plans are acceptable.

~~22.3.23.3.2~~ An acceptable make-up plan must include a timeline for making up all CME that needs to be completed to satisfy the requirements of this rule~~these Rules~~. The timeline shall identify the approved activities that the licensee plans to attend. The licensee may later substitute activities, but the plan shall indicate that it is the licensee's good faith intent to complete the activities listed at the time of submission. A licensee shall have up to one hundred twenty (120) days to complete the CME make-up plan.

~~22.3.23.3.3~~ Any licensee who will not complete a make-up plan within the time specified by the plan shall contact the Board at least 30 days in advance of the date on which the period will end to notify the Board and submit a revised plan and request for extension of time.

~~22.3.3.4~~23.3.1 The request for extension of time must include an explanation of the reasons why the licensee was unable to complete the required training in accordance with the plan.

~~22.3.3.23.3.2~~ Extensions of the make-up plan period are limited to 90 days, during which the licensee shall complete the required CME. Further extensions will be granted only for good cause shown, for reasons such as: serious illness of the licensee or a family member; death of an immediate family member; significant personal hardship, such as a house fire; significant and ongoing medical staff shortage during the make-up period; or similarly compelling reasons.

~~22.3.3.3~~23.3.3 The Board may delegate to the Board Executive Director the authority to approve requests to extend the time for a make-up plan in accordance with this rule~~these rules~~. Any request for extension not granted by the Executive Director shall be considered by the Board.

~~22.3.4~~23.3.4 CME activity completed as part of a make-up plan does not count toward satisfaction of the requirement to complete CME during that current licensing cycle; activity may only be counted once. If a multi-hour activity is performed partly in satisfaction of a make-up plan and partly for

the CME requirement associated with the current licensing cycle, the licensee shall clearly document the allocation.

**22.4.23.4 Failure to Certify Completion of Required CME, File a Make-Up Plan, or Complete a Make-Up Plan**

~~22.4.1~~23.4.1 A licensee who has failed to submit certification of completion of CME as required by law and ~~this rule~~ these rules, or who having failed to certify completion of CME has failed to submit a make-up plan with a license renewal application, will be notified of such failure and have not more than 15 days from receipt of notice to file with the Board either a certification of completion of CME or a make-up plan.

~~22.4.2~~23.4.2 A licensee who fails to file a certificate of completion of CME at the end of a make-up period, or to file a request for an extended make-up period, shall be notified of such failure and have not more than 15 days from receipt of notice to file with the Board either a certificate of completion of CME or another request for extension of time in which to make up CME.

~~22.4.3~~23.4.3 A licensee who submits a certificate of completion at the time of submission of the license renewal application, or who has filed an acceptable make-up plan with the renewal application and is in the make-up period, or who having failed to complete the first make-up plan has received approval from the Board for an extended make-up period that has not yet expired, is in good standing with respect to CME requirements.

~~22.4.4~~23.4.4 Any licensee not in good standing with respect to CME requirements is subject to investigation by the Board for unprofessional conduct.

**22.5.23.5 Grounds for Disciplinary Action**

~~22.5.1~~23.5.1 Grounds for disciplinary action include the conduct set forth in 26 V.S.A. §§ 1354, 1398, ~~1739a~~ and 18 V.S.A. § 1852.

**22.6.23.6 Disciplinary Action**

~~22.6.1~~23.6.1 All complaints and allegations of unprofessional conduct shall be processed in accordance with Section V of ~~this rule~~ these rules.

~~22.6.2~~23.6.2 After notice and an opportunity for hearing, the Board may take disciplinary action against any applicant or physician found guilty of unprofessional conduct, as provided by 3 V.S.A. § 809, and 26 V.S.A. §§ 1361(b), including but not limited to:

~~22.6.2.1~~23.6.2.1 Reprimand, suspend, revoke, limit, condition, deny or prevent renewal of license;

~~22.6.2.2~~23.6.2.2 Required completion of continuing education;

~~22.6.2.3~~ 23.6.2.3 Required supervised training or practice for a specified period of time or until a satisfactory evaluation by the supervising physician has been submitted to the Board.

~~22.7.23.7~~ 23.7 **Right to Appeal**

~~22.7.1~~ 23.7.1 A party aggrieved by a final decision of the Board may, within 30 days of the decision, appeal that decision by filing a notice of appeal with the Executive Director of the Vermont Board of Medical Practice, as provided by 26 V.S.A. § 1367 and 3 V.S.A. § 815.

### SECTION III. PHYSICIAN ASSISTANTS

#### 24.0 Introduction-

~~24.1~~ 24.1 Physician assistants practice medicine pursuant to a written practice agreement with a participating physician. Physician assistant practice is limited to medical care within the physician assistant's education, training, and experience, and subject to any restrictions stated in the practice agreement.

~~24.1~~ Physician assistants practice medicine with physician supervision. Physician assistants may perform those duties and responsibilities, including the prescribing and dispensing of drugs and medical devices, that are delegated by their supervising physicians.

~~24.2~~ 24.2 As provided by 26 V.S.A. § 1739, ~~physician assistants~~ physician assistants are responsible for their own medical decision making. A participating physician in a practice agreement with a physician assistant is not, by the existence of the practice agreement alone, legally liable for the actions or inactions of the physician assistant. However, that statutory language does not otherwise limit the liability of the participating physician. ~~shall be considered the agents of their supervising physicians in the performance of all practice-related activities, including but not limited to, the ordering of diagnostic, therapeutic and other medical services.~~

~~24.3~~ It is the obligation of each team of physician(s) and the physician assistant to ensure that the written Delegation Agreement filed with the Board clearly delineates the role of the physician assistant in the medical practice of the supervising physician(s), as further specified in these rules.

#### 25.0 Initial Licensure-

~~25.1~~ 25.1 For each applicant for licensure as a physician assistant the Board must receive, in a form satisfactory to the Board:

~~25.1.1~~ 25.1.1 A complete online application;

- 25.1.2 Proof of identity and that the applicant is at least 18 years of age as evidenced by a certified birth certificate or a copy of a naturalization certificate;
- 25.1.3 Verification of certification or licensure in all other states, territories, or provinces where currently or ever certified or licensed to practice at any level, including permanent, temporary, and training licenses or certifications;
- 25.1.4 Two reference forms from ~~supervising~~ allopathic or osteopathic physicians, including one from a physician who supervised or worked closely with the applicant at their most recent practice site ~~primary supervising physician~~;
- 25.1.4.1 Applicants with ~~less~~ fewer than six months of substantially full-time (at least 30 hours per week) practice must provide a reference from their physician assistant training program director in place of one of the references from a supervising physician. A reference to meet this requirement may be from a physician assistant if the training program director is a physician assistant.
- 25.1.5 The Board of Medical Practice's Certificate of Physician Assistant Education form for primary source documentation of completion of a Board-approved physician assistant program sponsored by an institution of higher education, completed and submitted by the institution;
- 25.1.6 An original certification from NCCPA. Primary source documentation of current certification sent directly to the Board by NCCPA;
- 25.1.7 Completed practice agreement with a qualified participating physician who holds a Vermont license as an allopathic or osteopathic physician ~~primary supervising physician application form~~ (for applications who do not have a current employment offer when applying for licensure, see Section 254.2);
- ~~25.1.8 Secondary supervising physician form, if applicable, for each physician who will be a secondary supervisor;~~
- ~~25.1.9 A Delegation Agreement that meets the requirements of section 27.0;~~
- ~~25.1.10 A completed Employment Contract Form;~~
- ~~25.1.11~~ 25.1.8 The Uniform Application Affidavit and Authorization for Release of Information Form;
- ~~25.1.12~~ 25.1.9 National Practitioner Data Bank Self-Query Report. This must be a current Self-Query Report issued within 60 days of submission of the application. Information about obtaining a Self-Query Report is in the instructions to the application;
- ~~25.1.13~~ 25.1.10 The applicant's CV (curriculum vitae) or résumé; and



~~25.1.14~~25.1.11 The required fee.

25.2 Upon written request of the applicant, an application may be considered complete and be processed by the Board without a ~~pPractice aAgreement~~supervising physician documentation, a delegation agreement, and the Employment Contract Form. However, if a license is issued it will be inoperable and the applicant will not be able to engage in Vermont practice until all the required documentation ~~practice agreement Practice Agreement~~has been receiveaccepted by the Board. Licensees should verify that the Board has received the ~~practice agreement Practice Agreement~~by checking the Board's online system.

25.3 At the discretion of the licensing committee or the Board, any applicant may be required to be interviewed by a Board member.

**26.0 Physician Assistant Renewal:** In addition to the general renewal requirements set forth in section 7.0 for renewal, a physician assistant must submit: current contract; updated Delegation Agreement; updated Primary Supervisor Form; and, if applicable, updated Secondary Supervisor Form(s).

A physician assistant who is not in active practice may renew an inoperable license, but cannot practice until those documents are filed with and accepta practice agreement with a participating physician is received by the Board. Each practice agreement between a physician assistant and a participating physician must be reviewed, and if necessary updated, during the 90 days 30 days preceding submission of the physician assistant's renewal application. The physician assistant shall maintain documentation to show the date on which the practice agreement was reviewed.

~~26.0~~

## **27.0 Practice Agreement Requirements**

27.1 Practice aAgreements must meet the requirements of 26 V.S.A. § 1735a. The requirement for a physician to be accessible for consultation by telephone or electronic means at all times when a physician assistant is practicing is also satisfied when a physician is in the same location and available for in-person consultation. A practice agreement may be submitted in hard copy or filed with the Board by email or fax.

27.2 A pPractice Aagreement must include the Vermont medical license number of the participating physician and the physician assistant.

27.3 A practice agreement ~~Practice Agreement~~must be reviewed by the physician assistant and the participating physician or another qualified physician, as provided by 26 V.S.A. § 1735a(d), no less frequently than at the time of the physician assistant's license renewal. The review must be documented in writing at the time that it is completed and signed by the physician assistant and reviewing physician. If changes are made to the practice agreement ~~Practice~~

~~Agreement~~ the revised agreement must be signed by the physician assistant and participating physician and submitted to the Board.

26.1—Submission of a New Practice Agreement upon Employment Changes. A new practice agreement ~~practice agreement~~ must be received by the Board before a physician assistant may practice after a change in employment. A new practice agreement ~~Practice Agreement~~ must be submitted to the Board whenever a physician assistant begins practice with a new employer. This includes both leaving one employment and beginning at another and adding a new employer while continuing to work for a current employer. There must be a ~~practice agreement~~ ~~ractice agreement~~ that applies to each practice setting. If a physician assistant's practice agreement ~~practice agreement~~ includes restrictions that limit its application to a new practice setting with the same employer, such as by geographic location, by department, or by scope of practice allowed, a new practice agreement ~~Practice Agreement~~ must be submitted for a new practice setting beyond those restrictions.

27.4

~~26.2~~ 26.5—Submission of a New Practice Agreement Upon Unavailability of Participating Physician Who Is a Sole Practitioner. When a physician assistant's participating physician is the only physician in the practice and without prior knowledge becomes unavailable as the result of serious illness, injury, or death, the physician assistant may continue to practice for up to 30 days without entering a practice agreement ~~Practice Agreement~~ with a new participating physician. After 30 days the physician assistant may not practice unless a new practice agreement ~~Practice Agreement~~ has been submitted to the Board.

27.5

~~276.6~~—Submission of a New Practice Agreement Upon Unavailability of Participating Physician – General Rule. When a physician assistant's participating physician becomes unavailable As soon as it is known that a physician assistant's participating physician will be unavailable and is expected to be unavailable for 30 days or more in any circumstances other than as described in 276.4-5, the physician assistant must submit a new practice agreement ~~Practice Agreement~~ with a participating physician and may not practice after the participating physician becomes unavailable until the new practice agreement has been submitted to the Board.

27.6

#### Practice Agreements When A PA Has Multiple Practice Sites

27.7 Practice Agreements When a Physician Assistant Has Multiple Practice Sites. While separate practice agreements are not required for each practice setting of a

PA who has multiple practice settings, in some cases it may not be possible for a single practice agreement to cover each of a PA's practice settings, such as when a PA works for two different employers, or when a participating physician within one employing organization is not willing to act as the participating physician for an additional practice site with the same employer. Although a single practice agreement may apply to more than one practice setting, in instances where a practice agreement does not work for one or more of a PA's additional practice sites there must be a practice agreement in place that applies to each practice setting.

## **~~27.0 — Changes in Employment, Supervision or Practice Site~~**

~~27.1 — All required notifications and any additional requested materials must be received and accepted by the Board prior to a PA's practice in a new location or with a new primary supervisor. PAs and supervising physicians shall verify that the documentation has been accepted by the Board as indicated in the Board's online system.~~

~~27.1.1 Adding a New Employer. If the physician assistant adds a new employer, such as an additional or new institution, clinic, department, or other agency, the following information shall be submitted:~~

~~27.1.1.1 — Primary supervising physician form;~~

~~27.1.1.2 — Secondary supervising physician form, if applicable;~~

~~27.1.1.3 — A Delegation Agreement that meets the requirements of section 27.0;~~

~~27.1.1.4 — A completed Employment Contract Form;~~

~~27.1.2 The following information shall be submitted prior to a change of Primary Supervising Physician when Secondary Supervising Physician Remains the Same:~~

~~27.1.2.1 — Primary supervising physician form; and~~

~~27.1.2.2 — A Delegation Agreement as defined by 2.11 and described in 27.0;~~

~~27.1.3 When a change or addition of a Secondary Supervising Physician occurs but the Primary Supervising Physician Remains the Same, a Secondary Supervising Physician Form shall be submitted prior to the change.~~

~~27.1.4 Prior to any changes in tasks, duties, or terms of primary supervision, a new Delegation Agreement shall be submitted.~~

## **~~28.0 — Supervision, Responsibilities, Delegation Agreement, Prescribing~~**

~~28.1 — Supervision, as defined in section 2.34 and designed around board expectation as stated in 27.7, shall include but not be limited to:~~

Effective Date: x/x/2022

~~28.1.1 Regular and effective access to the supervising physician, either in person or electronically, for consultation regarding on-going patient care while they are being treated by the PA;~~

~~28.1.2 Regular, retrospective review of selected PA-generated charts by the supervising physician, with documentation of such review (see 2.7 for adequacy of supervision);~~

~~28.1.3 Regularly scheduled and documented discussions of cases selected by the supervising physician and may also include additional cases chosen by the PA;~~

~~28.2 Responsibilities:~~

~~28.2.1 The Physician Assistant shall:~~

~~28.2.1.1 Ensure adequate supervision of practice is occurring in accordance with these rules, as specified in section 27.1 and the Delegation Agreement.~~

~~28.2.1.2 During periods of unavailability of the primary supervising physician, practice only if the PA has verified the availability of a secondary supervising physician, who is identified in documentation on file with the Board.~~

~~28.2.1.3 Verify on-line that documentation regarding supervising physician(s) has been accepted as indicated in the Board's online system.~~

~~28.2.2 The Primary Supervising Physician shall:~~

~~28.2.2.1 Supervise PAs only in the field(s) of medicine in which the physician is qualified and actively practices;~~

~~28.2.2.2 Ensure that the PA's tasks/duties are appropriate given the PA's training, experience, and practice setting;~~

~~28.2.2.3 When supervising, be available for consultation and review in accordance with the plan set forth in the Delegation Agreement;~~

~~28.2.2.4 Ensure a copy of the PA's Delegation Agreement is available at each location where the PA practices under the physician's supervision;~~

~~28.2.2.5 Notify the Board promptly but no more than three days from the discontinuation of the PA's employment and the reason(s) therefor. Notification shall be submitted using the Board's form and shall include the reasons for termination of employment and any allegation of unprofessional conduct as described in 26 V.S.A. §1736;~~

- ~~28.2.2.6~~ Sign a statement certifying that the primary supervision physician has read the statutes and Board rules governing PAs; and
- ~~28.2.2.7~~ Verify online that documentation regarding supervising physician(s) has been accepted as indicated by the Board's online system;
- ~~28.2.3~~ The Secondary Supervising Physician shall:
- ~~28.2.4~~ Supervise PAs only in the field(s) of medicine in which the secondary supervising physician is qualified and actively practices;
- ~~28.2.5~~ Be available for consultation as secondary supervising physician;
- ~~28.2.6~~ Have read the Delegation Agreement submitted to the Board;
- ~~28.2.7~~ Notify the Board no later than the next business day in writing of the termination of secondary supervision and the reason(s) for termination. Notification is required if the scope of practice changes or there is a change in the secondary supervising physician(s);
- ~~28.2.8~~ Sign a statement, provided by the form, certifying that the secondary supervising physician has read the statutes and Board rules governing physician assistants.
- ~~28.3~~ The Delegation Agreement document shall be signed by the primary supervising physician and the PA, and shall cover at least the following:
- ~~28.3.1~~ Narrative: A description of the practice setting, patient population common to the practice and a general overview of the role of the physician assistant in that practice.
- ~~28.3.2~~ Supervision:
- ~~28.3.2.1~~ A detailed description of the manner in which on site and off-site physician supervision and communication will occur;
- ~~28.3.2.2~~ A detailed description of the manner in which secondary supervising physicians will be utilized, and the means by which communication with them will be managed;
- ~~28.3.2.3~~ A detailed description of the manner in which emergency conditions will be handled in the absence of an on-site physician, including:
- ~~28.3.2.3.1~~ Plans for immediate care;
- ~~28.3.2.3.2~~ Means of accessing emergency transport;
- ~~28.3.2.4~~ A detailed description of the physician's supervision plan for the PA's practice; and
- ~~28.3.2.5~~ A detailed description of the physician's plan for retrospective review of PA charts which must at least include the following:

~~28.3.2.5.1 The frequency with which these reviews will be conducted;~~

~~28.3.2.5.2 The minimum number or percentage of charts that will be reviewed;~~

~~28.3.2.5.3 The method by which charts will be selected for review; and~~

~~28.3.2.5.4 The methods by which the review will be documented;~~

~~28.3.3 Sites of Practice: Name, physical address and type of facility for each practice site.~~

~~28.3.4 Duties: A list of the tasks and duties delegated to the PA, which shall include only activities within the supervising physician's scope of practice. The supervising physician may only delegate those tasks for which the physician assistant is qualified by education, training and experience to perform.~~

~~28.3.5 Authorization To Prescribe. A PA may prescribe only those drugs that are within the scope of practice of both the PA and the primary supervising physician as documented in the Delegation Agreement. If authorized to prescribe prescription drugs and/or devices, the delegation agreement must address all of the following (if applicable):~~

~~28.3.5.1 Whether the PA is authorized to prescribe controlled substances;~~

~~28.3.5.2 The PA's DEA number; and~~

~~28.3.5.3 The specific schedules authorized.~~

~~28.4 At no time shall the scope of practice of the PA exceed the normal scope of either the primary or secondary supervising physician(s)' practice.~~

~~28.5 Advertising or communications with the public from the PA or regarding the PA and/or the availability of the PA's services shall clearly identify the PA's supervising physician by name and shall not state, imply, or otherwise lead the public to believe that the PA practices independently of such supervision.~~

~~28.6 Filing of a Delegation Agreement with the Board to establish a work site for a PA does not constitute Board approval of the substance of the Delegation Agreement, nor is it evidence that the Board finds the plan for supervision adequate. Acceptance of the filing is only acknowledgement that the Board has received the completed documentation.~~

~~28.7 Adequacy of Supervision. If the question of adequacy of supervision is presented in a case before the Board, the Board will consider:~~

~~28.7.1.1 Whether the documented plan for supervision was followed;~~

~~28.7.1.2 The PA's experience level in terms of time and quality;~~

~~28.7.1.3 The physician's familiarity with the PA's capabilities based upon the length of time the two have worked together and the degree to which the physician has had the opportunity to observe the PA's performance;~~

~~28.7.1.4 The complexity, difficulty, and seriousness of the medical procedures that the PA is allowed to undertake pursuant to the Delegation Agreement;~~

~~28.7.1.5 The degree to which the supervisor or other physicians are readily available to immediately consult or take over care in the event of difficulty;~~

~~28.7.1.6 Any adverse information that the physician supervisor knows about or reasonably should know about regarding specific risks, such as a history of discipline of the PA or indications of impairments that may impact quality of care.~~

~~28.8 Notice to Patients of Use of Physician Assistant. Any physician, clinic, or hospital that uses the services of a physician assistant must post a clear public notice to that effect.~~

## **29.028.0 Physician Assistant Professional Standards; Disciplinary Procedures**

### **28.1 Prescribing Controlled Substances for SupervisorsParticipating Physician-**

~~29.1 It is unprofessional conduct for a physician assistant to prescribe or dispense controlled substances listed in D.E.A. Schedules II, III, or IV for a physician who is the PA's primary or secondary supervisorparticipating physicianinphysician.~~

### **28.2 Prescribing for or Treating SupervisorsParticipating Physician-**

~~It is discouraged for a PA to prescribe or dispense non-controlled prescription substances for the PA's primary or secondary supervisorparticipating physician. PAs who treat a supervisortheir participating physician are required to meet all standards of appropriate care, including proper establishment of a professional relationship with the patient and maintenance of appropriate patient records.~~

### **28.3 Practice Without a Practice Agreement in Place-**

~~It is unprofessional conduct for a physician assistant to practice without having a valid practice agreement Practice Agreement that applies to the practice setting and the care provided, unless one of the two exceptions stated in 26 V.S.A. § 1734c(b) and 26 V.S.A. § 1735a(e) applies. The practice agreement Practice Agreement must be on file with the Board. Licensees should verify that practice agreements Practice Agreements were received by the Board by checking the Board's online system.~~

~~29.2~~

### **29.328.4 Continuing Education-**

Effective Date: x/x/2022

~~29.3.1~~28.4.1 As evidence of continued competence in the knowledge and skills of a physician assistant, all physician assistants shall complete a continuing medical education program of 100 approved credit hours every two years. A minimum of 50 credit hours shall be from Category 1. Proof of completion shall be submitted to the Board with the application for renewal of certification.

~~29.3.2~~28.4.2 Certification or recertification by the NCCPA at any time during a 2-year licensure period may be accepted in lieu of 100 hours continuing medical education credits for that 2-year period. PAs must also comply with any applicable continuing medical education requirements established by Vermont law or Board Rule.

**28.4.3 Required CME for PAs With D.E.A. Number-**

~~29.3.3~~ All licensees who prescribe controlled substances shall certify at the time of each renewal that they have completed at least two hours of CME activity on controlled substances prescribing. The activity must be accredited as AMA PRA Category 1 Credit™ training, ~~or American Academy of Physician Assistants Category 1 training, or be specifically designated as qualifying by the Board.~~ The following topics must be covered, as required by Vermont law: abuse and diversion, safe use, and appropriate storage and disposal of controlled substances; the appropriate use of the Vermont Prescription Monitoring System; risk assessment for abuse or addiction; pharmacological and nonpharmacological alternatives to opioids for managing pain; medication tapering and cessation of the use of controlled substances; and relevant State and federal laws and regulations concerning the prescription of opioid controlled substances. Each licensee who is registered with the D.E.A. and who holds a D.E.A. number to prescribe controlled substances, or who has submitted a pending application for one, is presumed to prescribe controlled substances and must meet this requirement. Any physician assistant who is required to certify completion of this CME to renew, but who cannot, will be subject to the provisions regarding makeup of missing CME in subsections ~~232.3~~ and ~~232.4~~.

~~29.4.2~~28.5 **Grounds for Disciplinary Action**

~~29.4.1~~28.5.1 Grounds for disciplinary action include the conduct set forth in 26 V.S.A. § 1736. Under 26 V.S.A. § 1734(e), failure to maintain competence in the knowledge and skills of a physician assistant may result in revocation of license, following notice of the deficiency and an opportunity for a hearing.

~~29.5.2~~28.6 **Disciplinary Action**

~~29.5.1~~28.6.1 All complaints and allegations of unprofessional conduct shall be processed in accordance with Section V of this rule ~~these rules~~.



~~29.5.2~~28.6.2 After notice and an opportunity for hearing, the Board may take disciplinary action against any applicant or physician assistant found guilty of unprofessional conduct, as provided by 3 V.S.A. § 809, and 26 V.S.A. §§ 1361(b) and 1737, including but not limited to:

~~29.5.2.1~~28.6.2.1 Reprimand, suspend, revoke, limit, condition, deny or prevent renewal of license;

~~29.5.2.2~~28.6.2.2 Required completion of continuing education;

~~29.5.2.3~~28.6.2.3 Required supervised training or practice for a specified period of time or until a satisfactory evaluation by the supervising physician has been submitted to the Board.

#### ~~29.6~~28.7 **Right to Appeal**

~~29.6.1~~28.7.1 A party aggrieved by a final decision of the Board may, within 30 days of the decision, appeal that decision by filing a notice of appeal with the Executive Director of the Vermont Board of Medical Practice, as provided by 26 V.S.A. § 1367 and 3 V.S.A. § 815.

## **SECTION IV. PODIATRISTS**

### **29.0 License Required-**

No person shall practice or attempt to practice podiatry or hold himself or herself out as being able to do so in this state without possessing a valid, current license issued by the Board. In addition, no person shall use in connection with the person's name letters, words, or insignia indicating or implying that the individual is a podiatrist unless licensed by the Board.

### **30.0 General Requirements for Licensing-**

**30.1** In order to be granted a license to practice podiatry an applicant must meet the following eligibility requirements:

30.1.1 Be at least 18 years of age;

30.1.2 Be competent in speaking, writing and reading the English language;

30.1.3 Hold a diploma or certificate of graduation from a school of podiatric medicine accredited by the CPME and approved by the Board;

30.1.4 Have satisfactorily completed one year's postgraduate training in a United States hospital program or preceptor-ship which is approved by the Board and which meets the minimum requirements set by the CPME;

30.1.5 Have successfully completed the following examinations given by the National Board of Podiatry Examiners: Part I and Part II of the National

Board of Podiatric Medical Examiners examination followed in sequence by the PMLexis examination; and

30.1.6 Meet the requirements for moral character and professional competence.

**30.2** For each applicant for licensure as a podiatrist the Board must receive, in a form satisfactory to the Board:

30.2.1 Proof of identity and that the applicant is at least 18 years of age as evidenced by a certified birth certificate or a copy of a naturalization certificate;

30.2.2 For each podiatric medical school attended, the Board of Medical Practice Podiatric Medical Education Form;

30.2.3 For each postgraduate training program attended, the Board of Medical Practice Verification of Postgraduate Podiatric Training Form for primary source documentation of all postgraduate training;

30.2.4 Verification of podiatric medical licensing examination results; sent directly to the Board by the National Board of Podiatric Medical Examiners;

30.2.5 Verification of all podiatric medical licenses ever held in any state, territory, or province at any level, including permanent, temporary, and training licenses;

30.2.6 The Uniform Application Affidavit and Authorization for Release of Information Form.

30.2.7 Federation of Podiatric Medical Boards Disciplinary Inquiry Report. This must be a current report issued within 60 days of submission of application.

30.2.8 National Practitioner Data Bank Self-Query Report. This must be a current Self-Query Report issued within 60 days of submission of the application. Information about obtaining a Self-Query Report is in the instructions to the application.

30.2.9 The applicant's CV (curriculum vitae) or résumé.

30.2.10 Board of Medical Practice Reference Forms completed and submitted directly by the chief of service (or equivalent) and two other active physician or podiatrist staff members of the hospital where the applicant currently holds, or most recently held, privileges. At least one reference must be from a podiatrist. If an applicant has not held privileges at a hospital within two years of the date of submission of the application, or cannot provide references as indicated, the Board in its discretion may accept references from other podiatrists or physicians who have knowledge of the applicant's moral character and professional competence. An applicant shall indicate in the application if asking the Board to accept references that do not meet the above-stated standard.

- 30.3** All applicants must submit a completed Board application package, provide required documentation as specified in the application form or requested by the Board, and pay the application fee. Documents submitted with the application become part of the official record and will not be returned.
- 30.4** At the discretion of the licensing committee or the Board any applicant may be required to be interviewed by a Board member.

### **31.0 Licensure Without Examination**

- 31.1** To qualify for licensure without examination, an applicant must present evidence satisfactory to the Board that the applicant:
- 31.1.1 Holds a current and unrestricted podiatrist license in another jurisdiction;
  - 31.1.2 Has met licensing requirements in the other jurisdiction that are substantially equal to the Board's requirements for podiatric licensure;
  - 31.1.3 Has presented current reference letters as to moral character and professional competence; and
  - 31.1.4 Is professionally qualified; the Board may, in its discretion, require an applicant to take and pass the PMLexis examination prior to licensure.
- 31.2** At the discretion of the licensing committee, any applicant may be required to be interviewed by a Board member.

### **32.0 Satisfaction of Licensing Requirements by Practice in Another United States Jurisdiction**

- 32.1** A podiatrist can meet the licensing requirements stated in 30.1.2 and 30.1.5 by demonstrating that:
- 32.1.1 They have been practicing podiatry full-time in another United States jurisdiction while continuously holding a full, unrestricted, and unlimited license in good standing for at least three years preceding the day on which the Vermont license is to be granted; and
  - 32.1.2 They meet the education and training requirements stated in 26 V.S.A. § 372(b)(1).
- 32.2** For each applicant for licensure as a podiatrist under 26 V.S.A. § 372(a) the Board must receive, in a form satisfactory to the Board:
- 32.2.1 A complete online application;
  - 32.2.2 Proof of identity and that the applicant is at least 18 years of age as evidenced by a certified birth certificate or a copy of a naturalization certificate;

- 32.2.3 For each podiatric medical school attended, the Board of Medical Practice Podiatric Medical Education Form showing graduation from a school of podiatric medicine accredited by the CPME and approved by the Board;
- 32.2.4 For each postgraduate training program attended, the Board of Medical Practice Verification of Postgraduate Podiatric Training Form for primary source documentation of all postgraduate training.
- 32.2.5 Verification of the podiatry license that the applicant relies upon to qualify to apply under the endorsement procedure;
- 32.2.6 Board of Medical Practice Reference Forms completed and submitted directly by the chief of service (or equivalent) and two other active physician or podiatrist staff members of the hospital where the applicant currently holds, or most recently held, privileges. At least one reference must be from a podiatrist. If an applicant has not held privileges at a hospital within two years of the date of submission of the application, or cannot provide references as indicated, the Board in its discretion may accept references from other podiatrists or physicians who have knowledge of the applicant's moral character and professional competence. An applicant shall indicate in the application if asking the Board to accept references that do not meet the above-stated standard.;
- 32.2.7 The Uniform Application Affidavit and Authorization for Release of Information Form;
- 32.2.8 A Federation of Podiatric Medical Boards Disciplinary Inquiry Report. This must be a current report issued within 60 days of submission of of application.
- 32.2.9 National Practitioner Data Bank Self-Query Report. This must be a current Self-Query Report issued within 60 days of submission of the application. Information about obtaining a Self-Query Report is in the instructions to the application;
- 32.2.10 The applicant's CV (curriculum vitae) or résumé; and
- 32.3 All applicants must submit a completed Board endorsement application package, provide required documentation as specified in the application form or requested by the Board, and pay the application fee. Documents submitted with the application become part of the official record and will not be returned.
- 32.4 At the discretion of the licensing committee or the Board any applicant may be required to be interviewed by a Board member.

### **32.033.0 Limited Temporary License**

- 32.133.1 A limited temporary license may be issued for the purpose of completing postgraduate training and allows the licensee to practice under the supervision and control of a Vermont-licensed podiatrist in a CPME-accredited training program.

The applicant must be enrolled in a CPME-accredited program of postgraduate training or in sub-specialty clinical fellowship training in an institution that has an accredited program in the parent specialty. A limited temporary license may be renewed or reissued, upon submission of a completed renewal application, including fee and required documentation.

**32.2.33.2** Application for a limited temporary license shall include:

- 32.2.133.2.1** Completed online application;
- 32.2.233.2.2** The required fee;
- 32.2.333.2.3** A copy of the applicant's podiatric medical school diploma;
- 32.2.433.2.4** A supervising podiatrist's / program director's statement acknowledging statutory responsibility for the applicant's negligent or wrongful acts or omissions;
- 32.2.533.2.5** Direct verification of medical education;
- 32.2.633.2.6** ECFMG if applicable;
- 32.2.733.2.7** Verification of other state licensure;
- 32.2.833.2.8** NPDB self-query; and
- 32.2.933.2.9** Any additional forms or documentation required by the Board.

**33.034.0** Podiatrists' Professional Standards

**33.134.1** **Continuing Medical Education. Required CME:** Prescribing Controlled Substances. All podiatry licensees who prescribe controlled substances shall certify at the time of each renewal that they have completed at least two hours of CME activity on controlled substances prescribing. The activity must be accredited as AMA PRA Category 1 Credit™ training or Council on Podiatric Medical Education approved training, or be specifically designated as qualifying by the Board. The following topics must be covered, as required by Vermont law: abuse and diversion, safe use, and appropriate storage and disposal of controlled substances; the appropriate use of the Vermont Prescription Monitoring System; risk assessment for abuse or addiction; pharmacological and nonpharmacological alternatives to opioids for managing pain; medication tapering and cessation of the use of controlled substances; and relevant State and federal laws and regulations concerning the prescription of opioid controlled substances. Each licensee who is registered with the U.S. Drug Enforcement Agency (D.E.A.) and who holds a D.E.A. number to prescribe controlled substances, or who has submitted a pending application for one, is presumed to prescribe controlled substances and must meet this requirement. Any podiatrist who is required to certify completion of this CME to renew, but who cannot, will be subject to the provisions regarding makeup of missing CME in 232.3 and 232.4.

**34.2** Grounds for Disciplinary Action-

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~~33.2~~ Grounds for disciplinary action are set out in 3 V.S.A. § 129a, 18 V.S.A. § 1852, and 26 V.S.A. § 375.

~~33.3~~**34.3 Disciplinary Action-**

~~33.3.1~~**34.3.1** All complaints and allegations of unprofessional conduct shall be processed in accordance with this rule.

~~33.3.2~~**34.3.2** After notice and opportunity for hearing and upon a finding of unprofessional conduct, the Board may take disciplinary action against a licensed podiatrist, applicant, or person who later becomes an applicant as provided in 26 V.S.A. § 376 and 26 V.S.A. § 1361(b). Disciplinary action may include:

~~33.3.2.1~~**34.3.2.1** Refusal to issue or renew a license;

~~33.3.2.2~~**34.3.2.2** Suspension, revocation, limitation, or conditioning of a license;

~~33.3.2.3~~**34.3.2.3** Issuance of a warning or reprimand; and/or

~~33.3.2.4~~**34.3.2.4** Issuance of an administrative penalty.

~~33.3.3~~**34.3.3** The Board may approve a negotiated agreement between the parties. The conditions or restrictions that may be included, without limitation, in such an agreement are set forth in 26 V.S.A. § 376(d).

**34.4 Right to Appeal-**

~~33.4~~ A party aggrieved by a final decision of the Board may, within 30 days of the decision appeal to the Vermont Supreme Court, by filing a notice of appeal with the Executive Director as provided by 26 V.S.A. § 375(d).

**SECTION V. PROCEDURE FOR COMPLAINTS MADE AGAINST PHYSICIANS, PODIATRISTS, PHYSICIAN ASSISTANTS, ANESTHESIOLOGIST ASSISTANTS, AND RADIOLOGIST ASSISTANTS**

**35.0 Initiating a Complaint**

**35.1 Form of Complaint; Filing**

**35.1.1** Any ~~party~~one wishing to make a complaint of unprofessional conduct against a professional regulated by the Board may file a written complaint with the Board. Written complaints must include identifying and contact information for the complainant. The Board provides a printed complaint form for this purpose. Use of a form is preferred, but not required. If applicable, a complainant must provide authorization for the release of relevant medical records using the Board's form.

35.1.2 The Board may open an investigation on its own initiative to evaluate instances of possible unprofessional conduct that may come to its attention. 26 V.S.A. § 1355(a); 3 V.S.A. § 129(b).

## **36.0 Notice**

### **36.1 Notice to Complainant-**

~~36.1~~ The Board will send the complainant a standard letter of acknowledgment stating that the complaint has been received by the Board and that it will be investigated.

### **36.2 Notice to Respondent-**

36.2.1 The Board will send the Respondent a copy of the complaint, a copy of a release of medical records signed by the patient or other authorized person, a copy of the statutory definition of unprofessional conduct, and a standard letter stating that:

36.2.1.1 This complaint has been lodged against him or her;

36.2.1.2 The letter is not a notice of a formal hearing; and

36.2.1.3 The respondent must respond in writing. The response should be addressed to the Investigating Committee at the address of the Board and filed with the Board within 20 days of the date of the letter.

36.2.2 The Respondent is responsible for the accuracy of the response and must sign the response, even if also signed by an attorney.

36.2.3 The Executive Director or Investigator may grant one extension of up to 20 additional days, or more for reasonable cause, to provide the response. A request for further delay must be submitted to the assigned ~~investigating~~ investigative committee.

36.2.4 In cases where the Board has initiated an investigation, the Board will send the Respondent a letter providing notice of the investigation and describing the matters for which response is requested.

36.2.5 Unlicensed Practice. No notice need be provided to the target of an investigation into unlicensed practice.

## **37.0 Investigative**

### **37.1 Investigative Committee-**

~~37.1~~ A standing ~~investigative~~ committee or one specially appointed, and an ~~Assistant Attorney General~~, will investigate each complaint and recommend disposition to the Board. The ~~investigating~~ investigative committee shall be

assisted by an investigator from the Board. After the file is received, the investigating committee will discuss the complaint and plan the investigation.

### **37.2 Cooperation with Investigation; Impeding an Investigation-**

37.2.1 Professionals are obligated to cooperate with the Board throughout an investigation. A Respondent may contest a subpoena using the appropriate mechanisms, but in the absence of a delay associated with a bona fide objection to subpoena a failure to respond to a subpoena within a reasonable time constitutes a violation of this rule~~these rules~~.

37.2.2 Professionals are prohibited from engaging in any action that may deter a witness from cooperating with a Board investigation and from retaliating against any person based upon the filing of a complaint or cooperation in any way with a Board investigation. Professionals are prohibited from concealing, altering or destroying any evidence that is or may be pertinent to a Board investigation.

37.3 Confidentiality of investigations is ~~addressed in~~ governed by 26 V.S.A. § 1318.

### **38.0 Suspension Prior to Completion of an Investigation-**

38.1 **Summary Suspension:** the investigativeng committee may find that certain alleged misconduct poses so grave a threat to the public health, safety, or welfare that emergency action must be taken. In such a case, the committee will request a special meeting of the hearing panel, and recommend that the Board order summary suspension of the Respondent's license or certification, pending a hearing under the authority of 3 V.S.A. § 814(c). If the Board orders summary suspension, a hearing will be scheduled as soon as practical, and the Assistant Attorney General will present the case against the suspended professional.

38.2 **Interim Suspension:** grounds for entry of such an order are as follow:

38.2.1 **Criminal Convictions:** the investigativeng committee shall consider any criminal conviction for which a licensee may be disciplined under 26 V.S.A. § 1354(3) as an unprofessional conduct complaint and may request that the Board immediately suspend the Respondent's license or certification under the authority of 26 V.S.A. § 1365. Upon receipt of the certified copy of the judgment of conviction, the Board may order an interim suspension pending a disciplinary hearing before the Board.

38.2.1.1 The disciplinary hearing shall not be held until the judgment of conviction has become final, unless Respondent requests that the disciplinary hearing be held without delay. The sole issue to be determined at the hearing shall be the nature of the disciplinary action to be taken by the Board.

38.2.1.2 The Respondent, within 90 days of the effective date of the order of interim suspension, may request a hearing concerning the interim suspension at which Respondent shall have the



burden of demonstrating why the interim suspension should not remain in effect. The interim suspension shall automatically terminate if Respondent demonstrates that the judgment of conviction has been reversed or otherwise vacated.

**38.2.2 Out-of-State Discipline:** the committee shall consider certain out-of-state disciplinary action as set forth in 26 V.S.A. § 1366 as an unprofessional conduct complaint and may request that the Board immediately suspend the Respondent's license or certification under authority of that statute.

**38.2.2.1** Upon receipt of the certified copy of the order or statement regarding the relevant out-of-state disciplinary action, the Board may order an interim suspension pending a disciplinary hearing before the Board.

**38.2.2.2** The Respondent, within 90 days of the effective date of the order of interim suspension, may request a hearing concerning the interim suspension at which Respondent shall have the burden of demonstrating why the interim suspension should not remain in effect. The interim suspension shall automatically terminate if Respondent demonstrates that the out-of-state disciplinary action has been reversed or vacated.

### **39.0 Disposition by the ~~Investigating~~ Investigative Committee**

**39.1** Once the ~~investigating~~ investigative committee determines that the investigation is complete, it shall pursue one of three possible dispositions:

**39.1.1 Concluding the Investigation:** If, after investigating the complaint, the committee and the assistant attorney general determine that the facts established by the investigation do not present cause for pursuing charges of unprofessional conduct, then the committee may recommend that the Board conclude the investigation. If approved by the Board, the case is closed without further action. A concluded investigation may be reopened if new evidence is received, a new and related complaint is made, or upon request for reconsideration.

**39.1.2 Settlement:** If, after investigating the complaint, the committee and the Office of the Attorney General determine that the facts established by the investigation present cause for pursuing charges of unprofessional conduct, the committee shall explore the possibility of stipulated settlements and consent orders, as established in a Stipulation.

**39.1.2.1** Recommended Stipulations should include a concession of wrongdoing by the Respondent, terms and conditions, an understanding that this concession may be relied on by the Board in case the licensee is later found to have engaged in unprofessional conduct, and an understanding that this final disposition of the complaint is public and that the Board shall

notify the Federation of State Medical Boards Board Action Data Bank, and the National Practitioner Data Bank, and may notify other states of its contents.

39.1.2.2 When a Stipulation is filed with the Board, the complainant shall be provided with a copy of the stipulation and notice of any stipulation review scheduled before the Board. The complainant shall have the right to be heard at any stipulation review.

39.1.2.3 The Stipulation is finalized ~~only~~ up-on acceptance by the full Board. If the ~~investigating~~ investigative committee recommends a disposition in the form of a Stipulation, the Board may vote to ask the committee to change the terms of the Stipulation. If a Stipulation is not accepted by the Board within a reasonable time, the ~~investigating~~ investigative committee may pursue specification of charges.

39.1.3 **Specification of Charges:** If after investigation the ~~investigating~~ investigative committee and the Assistant Attorney General determine that the facts established provide a basis to allege unprofessional conduct as defined by 26 V.S.A. § 1354 and the committee believes a settlement cannot be reached or is not warranted on the facts, a Specification of Charges shall be signed by the Executive Director. the committee shall recommend the filing of a Specification of Charges by the Office of the Attorney General. Charges will be signed by the Board Secretary.

#### 40.0 Disciplinary Proceedings

40.1 ~~The Board Chair~~ Executive Director may designate a hearing ~~committee panel~~ comprised composed of at least one physician member of the Board and at least one public member. Members may be appointed as provided by 26 V.S.A. § 1372.55(b). The role of the hearing panel is to hear evidence, make findings of fact, and make recommendations to the Board for a decision on the charges.

#### 40.2 Specification of Charges; Notice; Failure to Appear; Default.

40.2.1 The Board commences disciplinary proceedings by serving a Specification of Charges and a notice of hearing upon the Respondent. The hearing is scheduled no sooner than 30 days after service. Notice shall tell the Respondent that a response may be filed within 20 days of service.

40.2.2 Notice shall be sent to the Respondent or other person or entity entitled to notice by certified mail, return receipt requested, with restricted delivery to addressee only. If service cannot be accomplished by certified mail, the Board will make reasonable attempt to accomplish service by regular mail or by personal service within the state, if feasible. A continuance may be granted upon request for good cause as determined by the Board, hearing committee, or a presiding officer. Copies of the notice shall be sent to the

complainant, the Assistant Attorney General, and the Respondent's attorney.

40.2.3 If the Respondent, after proper notice, does not respond to the Specification of Charges or appear at a hearing the Board may take disciplinary action after receiving the report of a hearing panel if a hearing panel is used, or after hearing the evidence if a hearing panel is not used. If a Respondent who did not participate in a panel hearing, attends the hearing before the Board, they may present arguments to the Board, but may not present additional evidence unless the Board elects grants the Respondent leave to take submit additional evidence. In such circumstances, the right of the Respondent to submit evidence is subject to any limitations set by the Board or hearing officer regarding the scope of evidence that may be presented.

40.2.340.2.4 A Respondent who has defaulted may submit a written motion within 10 days of the default to requesting a new hearing. The Board may grant a new hearing only upon a showing of good cause for not appearing at the hearing and for not requesting a continuation of the hearing. Upon a written motion by the Respondent and a showing of good cause, the Board shall issue a written decision making a determination on whether to grant a new hearing.

#### **40.3 Discovery-**

40.3 After a specification of charges has been filed, the Board, or its legal counsel, a hearing officer on its behalf, shall have authority to conduct a prehearing conference or discovery conference and to issue orders regulating discovery and depositions, scheduling, motions by the parties, and such other matters as may be necessary to ensure orderly preparation for hearing.

#### **40.4 Hearing-**

40.4 HThe hearings before a hearing panel and before the Board will be conducted according to the hearing provisions of 26 V.S.A. ch. 23 and the contested case provisions of the Administrative Procedure Act, 3 V.S.A. § 809-815. If a hearing panel is used, the parties will be allowed to present evidence to the Board only if the Board allows it. The A Board hearing officer may authorize its legal counsel to act as presiding officer at hearings and pre- and post-hearing conferences for the purpose of making procedural and evidentiary rulings. A presiding officer may administer oaths and affirmations, rule on offers of proof and receive relevant evidence, regulate the course of the hearing, convene and conduct prehearing conferences, dispose of procedural requests and similar matters, and take any other action authorized by the Administrative Procedure Act.

#### **40.5 Decision, Order, and Entry; Notice of Decision; Transcripts-**

40.5 The hearing officer Board legal counsel will prepare the written decision and order in accordance with the Board's instructions, within a reasonable time of

the closing of the record in the case. The decision and order will be entered upon being signed by the chair or vice-chair of the hearing panel and the Board shall enter the order. A decision and order is effective upon entry. Notice of the decision and order will be sent to the Respondent by certified mail. Notice of the decision and order will be sent to the Respondent's attorney, the complainant, and the prosecuting attorney by regular mail or email. A transcript of the proceeding is available at cost.

#### **41.0 Compliance Investigation, License or Certification Reinstatement or Removal of Conditions After Disciplinary Action**

##### **41.1 Assignment of Compliance Investigation-**

~~41.1~~ Upon entry of an order taking disciplinary action against a Respondent, a compliance investigation file will be opened. The file will be assigned to the investigative committee that was responsible for the initial investigation of unprofessional conduct. If the matter was investigated by a committee of ad hoc members, the file will be assigned to one of the standing investigative committees. The committee shall make recommendations for action to the full Board regarding compliance, requests for reinstatement, or modification or removal of conditions established by the order.

##### **41.2 License or Certification Reinstatement or Removal of Conditions-**

A person licensed or certified by the Board who has been disciplined may petition at a later date for license or certification reinstatement or modification or removal of conditions from the license or certification. In addition to complying with any restrictions or conditions on reinstatement imposed by the Board in its disciplinary order, an applicant applying for reinstatement may be asked to complete a reinstatement application. An investigative committee will review such information and make a recommendation to the full Board. The Board may hold a hearing to determine whether reinstatement should be granted.

##### **41.3**

##### **Appeals-**

~~41.2~~—A party aggrieved by a final decision of the Board may, within 30 days of the decision, appeal that decision to the Vermont Supreme Court, pursuant to 18 26 V.S.A. § 1367.

## **SECTION VI. RULES FOR ANESTHESIOLOGIST ASSISTANTS**

## **42.0 Training and Qualification-**

- 42.1** The eligibility requirements for certification as an anesthesiologist assistant are listed in 26 V.S.A. § 1654 and supplemented by this rule~~these rules~~. The requirements for temporary certification are outlined in 26 V.S.A. § 1655 and supplemented by this rule~~these rules~~.
- 42.2** Prior to being certified as an anesthesiologist assistant by the Board of Medical Practice, a person must be qualified by education, training, experience, and personal character to provide medical services under the direction and supervision of an anesthesiologist. The applicant must submit to the Board all information that the Board requests to evaluate the applicant's qualifications.

## **43.0 Initial Certification-**

- 43.1** For each applicant for initial certification as an anesthesiologist assistant the Board must receive, in a form satisfactory to the Board:
- 43.1.1 A complete online application;
  - 43.1.2 Proof of identity and that the applicant is at least 18 years of age as evidenced by a certified birth certificate or a copy of a naturalization certificate;
  - 43.1.3 Verification of certification or licensure in all other states, territories, or provinces where the applicant is currently or ever was certified or licensed to provide medical services, including permanent, temporary, and training licenses or certifications;
  - 43.1.4 Two Board of Medical Practice reference forms including one from a recent supervising anesthesiologist and one from another prior supervising anesthesiologist;
    - 43.1.4.1 Applicants with ~~less~~ fewer than six months of substantially full-time (at least 30 hours per week) practice must provide a reference form from the director of the applicant's training program and another reference form from an anesthesiologist who has supervised the applicant in practice or in training;
  - 43.1.5 The Board of Medical Practice's Certificate of Anesthesiologist Assistant Education form for primary source documentation of completion of a Board-approved anesthesiologist assistant program sponsored by an institution of higher education, completed and submitted by the institution;
  - 43.1.6 Primary source documentation of current certification sent directly to the Board by the National Commission for the Certification of Anesthesiologist Assistants (NCCAA);
  - 43.1.7 Completed Proposed Primary Supervising Anesthesiologist form signed by the applicant and supervising anesthesiologist;

- 43.1.8 Completed Proposed Secondary Supervising Anesthesiologist form signed by the secondary supervising anesthesiologist;
  - 43.1.9 A protocol signed by the proposed supervising anesthesiologist;
  - 43.1.10 A copy of the anesthesiologist assistant's employment contract;
  - 43.1.11 The Board of Medical Practice Anesthesiologist Assistant Employment Contract form;
  - 43.1.12 The Uniform Application Affidavit and Authorization for Release of Information Form;
  - 43.1.13 The applicant's CV (curriculum vitae) or résumé; and
  - 43.1.14 National Practitioner Data Bank Self-Query Report. This must be a current Self-Query Report issued within 60 days of submission of the application. Information about obtaining a Self-Query Report is in the instructions to the application.
- 43.2** All applicants must submit a completed Board application package, provide required documentation as specified in the application form or requested by the Board, and pay the application fee. Documents submitted with the application become part of the official record and will not be returned.
- 43.3** At the discretion of the licensing committee or the Board, any applicant may be required to be interviewed by a Board member.

#### **44.0 Temporary Certification-**

- 44.1** The Board may issue a temporary certification to an applicant who meets the educational requirements under 26 V.S.A. § 1654(1) if:
- 44.1.1 The NCCAA certification examination has not been offered since the applicant became eligible to take it; or
  - 44.1.2 The applicant has taken the NCCAA certification examination one time but has not yet received the results of the examination.
- 44.2** The holder of a temporary certification shall take and successfully pass the first available NCCAA examination. If the holder of a temporary certification does not take the examination, that temporary certification shall expire on the date of that examination. However, if the holder of a temporary certification can show that there was exceptional cause that prevented the individual from taking the examination, the Board may, in its discretion, and for good cause shown, renew the temporary certification until the date of the next available NCCAA examination.
- 44.3** If the holder of a temporary certification takes the first available NCCAA examination but does not successfully pass it, the temporary certification shall expire on the day after receiving notice of the failure to pass the examination. In

that case, the Board shall not renew the temporary certification. The applicant may re-apply for certification only after having taken and passed the examination.

#### **45.0 Renewal of Certification**

**45.1** Certification shall be renewable every two years on completion of the online renewal form, payment of the required fee and submission of: current contract; updated copies of primary and secondary supervision forms; updated protocol; and, verification of current, active NCCAA certification.

**45.2** Lapsed licenses may be renewed under the provisions of 26 V.S.A. § 1656.

#### **46.0 Change of Certification**

**46.1** The Board shall be notified and the appropriate applications and documentation filed whenever:

46.1.1 The anesthesiologist assistant's protocol changes;

46.1.2 The anesthesiologist assistant will be working at a different or an additional accredited facility; or

46.1.3 The anesthesiologist assistant will be supervised by a new or an additional anesthesiologist.

**46.2** Documents already on file with the Board may be referred to and need not be resubmitted.

#### **47.0 More Than One Supervising Anesthesiologist-**

**47.1** In any application for initial certification, temporary certification, renewal of certification or change of certification, if there is more than one anesthesiologist at an accredited facility who will supervise an anesthesiologist assistant, then, in addition to the information required to be submitted by this rule~~these rules~~, a document signed by all anesthesiologists who will be supervising the anesthesiologist assistant shall be filed with the Board with the application.

**47.2** Additional supervising anesthesiologists may be added subsequent to the application, provided the supervising anesthesiologist files a signed document with the Board. In the document, the anesthesiologists shall affirm that each assumes responsibility for all professional activities of the anesthesiologist assistant while the anesthesiologist is supervising the anesthesiologist assistant.

#### **48.0 Termination of Certification-**

If the supervisory relationship between the anesthesiologist and the anesthesiologist assistant is terminated for any reason, each party must notify the Board directly and

immediately in writing. The notice shall include the reasons for the termination. The anesthesiologist assistant shall cease practice until a new application is submitted by the supervising anesthesiologist and is approved by the Board.

#### **49.0 Practice-**

**49.1** An anesthesiologist assistant shall perform only those tasks assigned on a case-by-case basis by the supervising anesthesiologist. The anesthesiologist assistant shall implement the personalized plan for each patient as individually prescribed by the supervising anesthesiologist after that physician has completed a specific assessment of each patient. In determining which anesthetic procedures to assign to an anesthesiologist assistant, a supervising anesthesiologist shall consider all of the following:

49.1.1 The education, training and experience of the anesthesiologist assistant;

49.1.2 The anesthesiologist assistant's scope of practice as defined in 26 V.S.A. Chapter 29 and this rule~~these rules~~;

49.1.3 The conditions on the practice of the anesthesiologist assistant set out in the written practice protocol;

49.1.4 The physical status of the patient according to the physical status classification system of the American Society of Anesthesiologists, as in effect at the time the assignment of procedures is made. The classification system is available from the American Society of Anesthesiologists and shall be posted on the Board's website;

49.1.5 The invasiveness of the anesthetic procedure;

49.1.6 The level of risk of the anesthetic procedure;

49.1.7 The incidence of complications of the anesthetic procedure;

49.1.8 The physical proximity of the supervising anesthesiologist and the anesthesiologist assistant or assistants the anesthesiologist may be supervising concurrently; and

49.1.9 The number of patients whose care is being supervised concurrently by the supervising anesthesiologist.

**49.2** The supervising anesthesiologist retains responsibility for the anesthetic management in which the anesthesiologist assistant has participated.

#### **50.0 Supervision-**

**50.1** A supervising anesthesiologist shall supervise an anesthesiologist assistant within the terms, conditions, and limitations set forth in a written practice protocol. Anesthesiologist supervision requires, at all times, a direct, continuing and close supervisory relationship between an anesthesiologist assistant and the supervising anesthesiologist.



- 50.2 Supervision does not, ~~necessarily~~, require the constant physical presence of the supervising anesthesiologist; however, the anesthesiologist must remain readily available in the facility for immediate diagnosis and treatment of emergencies.
- 50.3 The supervising anesthesiologist shall be readily available for personal supervision and shall be responsible for pre-operative, intra-operative and post-operative care.
- 50.4 The supervising anesthesiologist shall personally participate in the most demanding procedures in the anesthesia plan, which shall include induction and emergence.
- 50.5 The supervising anesthesiologist shall insure that, with respect to each patient, all activities, functions, services and treatment measures are immediately and properly documented in written form by the anesthesiologist assistant. All written entries shall be reviewed, countersigned, and dated by the supervising anesthesiologist. The supervising anesthesiologist's signature on the anesthetic record will fulfill this requirement for all written entries on the anesthetic record.
- 50.6 Nothing in this section shall prohibit the supervising anesthesiologist from addressing an emergency in another location in the facility.

#### **51.0 Protocol and Scope of Practice.**

- 51.1 At no time shall the scope of practice for the anesthesiologist assistant include procedures or treatments that the supervising anesthesiologist does not perform within that practice.
- 51.2 The anesthesiologist assistant may assist the anesthesiologist in developing and implementing an anesthesia care plan for a patient. In so doing, the anesthesiologist assistant may, in the discretion of the anesthesiologist, do any of the following:
  - 51.2.1 Obtain a comprehensive patient history and present that history to the anesthesiologist who must conduct a pre-anesthesia interview and evaluation sufficient to confirm the anesthesiologist assistant's evaluation;
  - 51.2.2 Pretest and calibrate anesthesia delivery systems;
  - 51.2.3 Monitor, obtain and interpret information from the anesthesia delivery systems and anesthesia monitoring equipment;
  - 51.2.4 Place medically accepted monitoring equipment;
  - 51.2.5 Establish basic and advanced airway interventions, including intubations of the trachea and ventilatory support;
  - 51.2.6 Administer vasoactive drugs and start and adjust vasoactive infusions;
  - 51.2.7 Administer anesthetic drugs, adjuvant drugs and accessory drugs;
  - 51.2.8 Administer regional anesthetics;

- 51.2.9 Administer blood, blood products and supportive fluids;
- 51.2.10 Participate in administrative activities and clinical teaching activities;
- 51.2.11 Provide assistance to cardiopulmonary resuscitation teams in response to life-threatening situations;
- 51.2.12 Prescribe peri-operative medications to be used in the accredited facility; and
- 51.2.13 Participate in research activities by performing the same procedures listed above.
- 51.2.14 Any other activity that the Board approves in a protocol to allow for changing technology or practices in anesthesiology.

## **52.0 Prescriptive Authority-**

An anesthesiologist assistant shall not have authority to write prescriptions for medications that will be filled outside of the facility in which the anesthesiologist assistant works.

## **53.0 Places of Practice-**

An anesthesiologist assistant shall work only in a licensed hospital facility with the supervision of an anesthesiologist.

## **54.0 Patient Notification and Consent-**

Any physician, clinic, or hospital that uses the services of an anesthesiologist assistant must:

- 54.1 Post a clear notice to that effect in a conspicuous place;
- 54.2 Except in case of an emergency, ~~include language in the~~ provide the patient a consent form that includes that the anesthesiologist may use an anesthesiologist assistant; and
- 54.3 Require each anesthesiologist assistant to wear a name tag clearly indicating the title anesthesiologist assistant, per 26 V.S.A. § 1652.

## **55.0 Disciplinary Action-**

- 55.1 All complaints and allegations of unprofessional conduct shall be processed in accordance with Section IV of this rule ~~these rules~~.

**55.2** After notice and an opportunity for hearing, the Board may take disciplinary action against any applicant, anesthesiologist assistant trainee, or anesthesiologist assistant found guilty of unprofessional conduct, as provided by 3 V.S.A. §§ 129 and 809, and 26 V.S.A. § 1658, including but not limited to:

55.2.1 Reprimand, suspend, revoke, limit, condition, deny or prevent renewal of certification;

55.2.2 Required completion of continuing education;

55.2.3 Required supervised training or practice for a specified period of time or until a satisfactory evaluation by the supervising physician has been submitted to the Board.

**55.3** The Board may approve a negotiated agreement between the parties. The conditions or restrictions that may be included, without limitation, in addition to those above, in such an agreement are set forth in 3 V.S.A. § 809(d) and 26 V.S.A. § 1659(d).

#### **56.0 Right to Appeal-**

A party aggrieved by a final decision of the Board may, within 30 days of the decision, appeal that decision by filing a notice of appeal with the Executive Director of the Vermont Board of Medical Practice, as provided by 26 V.S.A. § 1367 and 3 V.S.A. § 815.

### **SECTION VII. RULE FOR RADIOLOGIST ASSISTANTS**

#### **57.0 Training and Qualification-**

**57.1** The eligibility requirements for certification as a radiologist assistant are listed in 26 V.S.A. § 2854 and supplemented by this rule~~these rules~~. The requirements for temporary certification are outlined in 26 V.S.A. § 2855 and supplemented by this rule~~these rules~~.

**57.2** Prior to being certified as a radiologist assistant by the Board of Medical Practice, a person must be qualified by education, training, experience, and personal character to provide medical services under the direction and supervision of a radiologist. The applicant must submit to the Board all information that the Board requests to evaluate the applicant's qualifications.

#### **58.0 Initial Certification-**

**58.1** An applicant for initial certification as a radiologist assistant shall submit to the Board:

58.1.1 A complete online application;

- 58.1.2 Proof of identity and that the applicant is at least 18 years of age as evidenced by a certified birth certificate or a copy of a naturalization certificate;
- 58.1.3 Verification of current licensure as a radiologic technologist in radiography in Vermont under Chapter 51 of Title 26 V.S.A.;
- 58.1.4 Verification of certification or licensure in all other states, territories, or provinces where the applicant is currently or ever was certified or licensed to provide medical services, including permanent, temporary, and training licenses or certifications;
- 58.1.5 Two Board of Medical Practice reference forms including one from a recent supervising radiologist and one from another prior supervising radiologist;
  - 58.1.5.1 Applicants with ~~less~~ fewer than six months of substantially full-time (at least 30 hours per week) practice must provide a reference form from the director of the applicant's training program and another reference form from a radiologist who has supervised the applicant in practice or in training;
- 58.1.6 The Board of Medical Practice's Certificate of Radiologist Assistant Education form for primary source documentation of completion of a Board-approved radiologist assistant program sponsored by an institution of higher education, completed and submitted by the institution;
- 58.1.7 Primary source documentation of current certification sent directly to the Board by the American Registry of Radiologic Technologists (ARRT);
- 58.1.8 Completed Proposed Primary Supervising Radiologist form signed by the applicant and supervising radiologist;
- 58.1.9 Completed Proposed Secondary Supervising Radiologist form signed by the secondary supervising radiologist;
- 58.1.10 A protocol signed by the proposed primary supervising radiologist;
- 58.1.11 The Board of Medical Practice Radiologist Assistant Employment Contract form;
- 58.1.12 A copy of the employment contract with the primary supervising radiologist or the hospital at which the radiologist practices, or in the absence of a contract, other proof of employment by the primary supervising radiologist or by the hospital at which the radiologist practices, as may be determined by the Board;
- 58.1.13 The Uniform Application Affidavit and Authorization for Release of Information Form;
- 58.1.14 The applicant's CV (curriculum vitae) or résumé; and

58.1.15 National Practitioner Data Bank Self-Query Report. This must be a current Self-Query Report issued within 60 days of submission of the application. Information about obtaining a Self-Query Report is in the instructions to the application.

58.2 All applicants must submit a completed Board application package, provide required documentation as specified in the application form or requested by the Board, and pay the application fee. Documents submitted with the application become part of the official record and will not be returned.

58.3 At the discretion of the licensing committee or the Board, any applicant may be required to be interviewed by a Board member.

#### 59.0 Temporary Certification-

59.1 The Board may issue a temporary certification to an applicant who otherwise meets the requirements of 26 V.S.A. § 2854(1), (3) and (4) if:

59.1.1 The ARRT certification examination has not been offered since the applicant became eligible to take it; or

59.1.2 The applicant has taken the ARRT certification examination one time but has not yet received the results of the examination.

59.2 The holder of a temporary certification shall take and successfully pass the ~~first~~ next available ARRT examination. If the holder of a temporary certification does not take the examination, that temporary certification shall expire on the date of that examination. However, if the holder of a temporary certification can show that there was exceptional cause that prevented them from taking the examination, the Board may, in its discretion, and for good cause shown, renew the temporary certification until the date of the next available ARRT examination.

59.3 If the holder of a temporary certification takes the first available ARRT examination but does not successfully pass it, the temporary certification shall expire on the day after receiving notice of the failure to pass the examination. In that case, the Board shall not renew the temporary certification. The applicant may re-apply for certification only after having taken and passed the examination.

#### 60.0 Renewal of Certification-

60.1 Certification shall be renewable every two years on completion of the online renewal form, payment of the required fee, and submission of: current contract; updated copies of primary and secondary supervision forms; updated protocol; verification of current licensure as a radiologic technologist in radiography in ~~Vermont under Chapter 51 of Title 26 V.S.A. ch. 51~~; and, verification of current active ARRT certification, including compliance with continuing education requirements.

60.2 Lapsed licenses may be renewed under the provisions of 26 V.S.A. § 2856.

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Effective Date: x/x/2022

#### **61.0 Change of Certification-**

**61.1** The Board shall be notified and the appropriate applications and documentation filed whenever:

61.1.1 The radiologist assistant's protocol changes;

61.1.2 The radiologist assistant will be working at a different or an additional office or hospital; or

61.1.3 The radiologist assistant will be primarily supervised by a different radiologist.

**61.2** Documents already on file with the Board may be referred to and need not be resubmitted.

#### **62.0 More Than One Supervising Radiologist**

**62.1** Each application for initial certification, temporary certification, renewal of certification or change of certification shall identify the primary supervising radiologist who shall be responsible for the radiologist assistant's professional activities and sign the protocol required under 26 V.S.A. § 2853.

**62.2** Subject to the scope of practice restrictions in this rule and Chapter 52 of Title 26, the radiologist assistant may also perform services under the supervision of additional board-certified radiologists working in the same office or hospital as the primary supervising radiologist ("secondary supervising radiologist[s]"), but must file a protocol regarding that supervisory relationship and a statement from the secondary supervising radiologist of the responsibility for the professional activities of the radiologist assistant performed under supervision.

#### **63.0 Termination of Supervision**

If the supervisory relationship between the primary supervising radiologist and the radiologist assistant is terminated for any reason, ~~each party~~both parties must notify the Board directly and immediately in writing, using the Board's Termination of Contract form. The radiologist assistant shall cease practice until a new application is submitted by a primary supervising radiologist and is approved by the Board.

#### **64.0 Practice-**

**64.1** A radiologist assistant shall perform only those tasks assigned on a case-by-case basis by the supervising radiologist. The radiologist assistant shall implement the

personalized plan for each patient as individually prescribed by the supervising radiologist after that physician has completed a specific assessment of each patient. In determining which radiologic procedures to assign to a radiologist assistant, a supervising radiologist shall consider all of the following:

- 64.1.1 The education, training and experience of the radiologist assistant;
- 64.1.2 The radiologist assistant's scope of practice as defined in Chapter 52 of Title 26 and ~~this rule~~ these rules;
- 64.1.3 The conditions on the practice of the radiologist assistant set out in the written practice protocol;
- 64.1.4 The guidelines adopted by the American College of Radiology, the American Society of Radiologic Technologists, and the ARRT, as amended from time to time;
- 64.1.5 The physical proximity of the supervising radiologist and the radiologist assistant or assistants the radiologist may be supervising concurrently; and
- 64.1.6 The number of patients whose care is being supervised concurrently by the supervising radiologist.

## **65.0 Supervision-**

- 65.1 A supervising radiologist shall supervise a radiologist assistant within the terms, conditions, and limitations set forth in the written practice protocol filed with the Board. Radiologist supervision requires, at all times, a direct, continuing and close supervisory relationship between a radiologist assistant and the supervising radiologist.
- 65.2 Supervision does not, necessarily, require the constant physical presence of the supervising radiologist; however, the radiologist must remain readily available in the facility for immediate diagnosis and treatment of emergencies.
- 65.3 The supervising radiologist shall ensure that, with respect to each patient, all activities, functions, services and treatment measures are immediately and properly documented in written form by the radiologist assistant. All written entries shall be reviewed, countersigned, and dated by the supervising radiologist. The supervising radiologist's signature on the medical record will fulfill this requirement for all written entries on the record.
- 65.4 Nothing in this section shall prohibit the supervising radiologist from addressing an emergency in another location in the facility.

## **66.0 Protocol and Scope of Practice-**

- 66.1 ~~At no time shall the scope of practice for the radiologist assistant include procedures or treatments that the supervising radiologist does not perform in within the practice.~~ A radiologist assistant's scope of practice is limited to

procedures and treatments that the supervising radiologist performs in the practice. -

**66.2** A radiologist assistant may not interpret images, make diagnoses, or prescribe medications or therapies.

**66.3** The radiologist assistant may assist the radiologist in developing and implementing a radiologic care plan for a patient. In so doing, the radiologist assistant may, in the discretion of the radiologist, perform patient assessment, patient management and selected examinations as outlined below:

66.3.1 Obtaining consent for and injecting agents that facilitate and/or enable diagnostic imaging;

66.3.2 Obtaining clinical history from the patient or medical record;

66.3.3 Performing pre-procedure and post-procedure evaluation of patients undergoing invasive procedures;

66.3.4 Assisting radiologists with invasive procedures;

66.3.5 Performing fluoroscopy for non-invasive procedures with the radiologist providing direct supervision of the service;

66.3.6 Monitoring and tailoring selected examinations under direct supervision (i.e., IVU, CT program, GI studies, VCUG, and retrograde urethrograms);

66.3.7 Communicating the reports of radiologist's findings to the referring physician or an appropriate representative with appropriate documentation;

66.3.8 Providing naso-enteric and oro-enteric feeding tube placement in uncomplicated patients;

66.3.9 Performing selected peripheral venous diagnostic procedures; and

66.3.10 Any other activity that the Board approves in a protocol to allow for changing technology or practices in radiology.

## **67.0 Places of Practice-**

A radiologist assistant shall work only in the office of the primary supervising radiologist or in the hospital in which the primary supervising radiologist practices.

## **68.0 Patient Notification and Consent**

~~68.0~~ -

Any physician, clinic, or hospital that uses the services of a radiologist assistant ~~must~~shall:



- 68.1 Post a clear notice to that effect in a conspicuous place;
- 68.2 Except in case of an emergency, include language in the patient consent form that the radiologist may use a radiologist assistant; and
- 68.3 Require each radiologist assistant to wear a name tag clearly indicating the title radiologist assistant.

#### 69.0 Disciplinary Action-

- 69.1 All complaints and allegations of unprofessional conduct shall be processed in accordance with Section IV of this rule ~~these rules~~.
- 69.2 After notice and an opportunity for hearing, the Board may take disciplinary action against any applicant, radiologist assistant trainee, or radiologist assistant found guilty of unprofessional conduct, as provided by 3 V.S.A. §§ 129 and 809, and 26 V.S.A. § 2858, including but not limited to:
  - 69.2.1 Reprimand, suspend, revoke, limit, condition, deny or prevent renewal of certification;
  - 69.2.2 Required completion of continuing education;
  - 69.2.3 Required supervised training or practice for a specified period of time or until a satisfactory evaluation by the supervising physician has been submitted to the Board.
- ~~69.3~~ The Board may approve a negotiated agreement between the parties. The conditions or restrictions that may be included, without limitation, in addition to those above, in such an agreement are set forth in 3 V.S.A. § 809(d) and 26 V.S.A. § 2859(e).

69.3

#### ~~70.0~~ Right to Appeal-

- 69.4 ~~a~~A party aggrieved by a final decision of the Board may, within 30 days of the decision, appeal that decision by filing a notice of appeal with the Executive Director of the Vermont Board of Medical Practice, as provided by 26 V.S.A. § 1367 and 3 V.S.A. § 815.

### SECTION ~~Section~~ VIII. NONDISCIPLINARY FINANCIAL PENALTIES.

#### 70.0 Introduction

The Board has discretion to offer licensees the opportunity to resolve a violation of an applicable statute or rule by paying a nondisciplinary financial penalty as provided by 26 V.S.A. § 1377. If such an offer is made and accepted, and the specified penalty received, the matter will be closed with no further action. ~~A licensee does not have the right to request that an offer for resolution by nondisciplinary financial penalty be extended. A licensee does not have the right to have a case resolved by nondisciplinary financial penalty if the Board does not extend an offer to resolve it in that manner.~~

70.1. As required by Act 126 of 2020, Sec. 8, the following table of violations and penalties is established.

70.1.1. Failure to maintain a current, valid mailing address, email address, or telephone number. \$25

70.1.2. Failure to disclose a pending malpractice case at the time of application for issuance of an initial or reinstated license. \$250

70.1.3. Failure to disclose a pending malpractice case at the time of application for issuance of a renewal license. \$100

70.1.4. Failure to disclose a pending investigation by the licensing authority of another jurisdiction at the time of application for issuance of an initial or reinstated license. \$250

70.1.5. Failure to disclose a pending investigation by the licensing authority of another jurisdiction at the time of application for a renewal license. \$100

70.1.6. Failure to disclose a pending investigation by a hospital, medical staff group, health care facility, professional association, or other body that has authority to take actions regarding the applicant's employment or right to practice medicine the time of application for issuance of an initial or reinstated license. \$250

70.1.7. Failure to disclose a pending investigation by a hospital, medical staff group, health care facility, professional association, or other body that has authority to take actions regarding the applicant's employment or right to practice medicine the time of application for issuance of a renewal license. \$100

70.1.8. Failure to disclose restriction or revocation of hospital privileges at the time of application for issuance of an initial or reinstated license. \$250

- 70.1.9. Failure to disclose restriction or revocation of hospital privileges at the time of application for a renewal license. \$100
- 70.1.10. Failure to disclose a felony criminal conviction that has not been expunged or overturned on an initial application. \$250
- 70.1.11. Failure to disclose a felony criminal conviction that has not been expunged or overturned on a renewal application. \$125
- 70.1.12. Failure to disclose a misdemeanor criminal conviction that has not been expunged or overturned on an initial application. \$125
- 70.1.13. Failure to disclose a misdemeanor criminal conviction that has not been expunged or overturned on a renewal application. \$75
- 70.1.14. Failure to disclose revocation or restriction of hospital privileges for reasons related to competence or character on an initial application. \$250
- 70.1.15. Failure to disclose revocation or restriction of hospital privileges for reasons related to competence or character on a renewal application. \$125
- 70.1.16. Failure to disclose voluntary surrender of a license to practice medicine or any other healing art after having been notified of an investigation that had not yet been resolved, or in lieu of a disciplinary action, on an initial application. \$250
- 70.1.17. Failure to disclose voluntary surrender of a license to practice medicine or any other healing art after having been notified of an investigation that had not yet been resolved, or in lieu of a disciplinary action on a renewal application. \$250
- 70.1.18. Failure to disclose licensure by other US jurisdictions on initial application. \$75 (per jurisdiction)
- 70.1.19. Failure to disclose licensure by other US jurisdictions on renewal application. \$50 (per jurisdiction)
- 70.1.20. Failure to inform the Board of new information of the types specified above when the applicant learns of it after the application is submitted but before an initial or reinstated license is granted. The same amount stated above for a failure to disclose.
- 70.1.21. Unspecified errors and omissions on any application. \$50 (per error or omission).

70.1.22. Working without a license during the first 48 hours after the license has lapsed. \$250

70.1.23. Certification on a license renewal application that the licensee has completed the Health Care Workforce Census, as required to renew, if the Workforce Census has not been completed. \$100

70.1.24. Certification on a license renewal application that the licensee has satisfied Continuing Medical Education requirements, if the requirements have not been completed. \$100 to \$250

70.2. In the event of repetition of the same violation at a later time, if the set penalty is less than \$250 the amount of the penalty may be doubled up to a maximum of \$250 for a single violation.

## **SECTION IX. PRE-APPLICATION DETERMINATION ON CRIMINAL BACKGROUND**

71.0 As provided by 26 V.S.A. § 1353(142), the Board will render a pre-application determination of whether an individual's criminal background would make the individual ineligible to be licensed or certified to practice one of the professions regulated by the Board.

72.0 A complete request for a pre-application determination regarding criminal background requires all of the following:

72.1. Completion of a form requesting the pre-application determination;

72.2. Completion by the applicant of all steps necessary for the Board to receive a fingerprint-supported National Crime Information Center (NCIC) criminal background record check;

72.3. Submission of certified copies of all criminal convictions relating to each crime on the individual's criminal record;

72.4. Copies of the charges, information, or indictment relating to each conviction; and

72.5. Any evidence of rehabilitation that the individual wishes to be considered by the Board in making the determination. Notarized affidavits may be submitted; live testimony will not be taken; and

72.6. Payment of the fee.

73.0 The request for determination will not be complete until all the above steps have been taken and the Board has received the NCIC record check.

74.0 The request for determination may be assigned to the Licensing Committee for the purpose of making a recommendation to the Board.

**SECTION ~~Section~~ X. SPECIAL PROVISION FOR LICENSING OF SPOUSES OF US MILITARY MEMBERS TRANSFERRED TO VERMONT.**

75.0 As provided by 26 V.S.A. § 1353(132)(A), the Board will take the following steps to expedite the licensure of applicants who are the spouse of a member of the United States Armed Forces who has been ordered to a duty station in Vermont, if the applicant is licensed in good standing for one of the professions regulated by the Board in another US jurisdiction and was employed in that profession at the time their spouse received orders to Vermont:

75.1. Applicants with at least one year of practice in good standing while licensed in another US jurisdiction may apply using the procedures established in Section 16.0.

75.2. For applicants who were accompanying their spouse at an overseas location, who were practicing in a position with the US government, and who were licensed in good standing in a US jurisdiction, such practice shall be accepted as the equivalent of practice in another US jurisdiction.

75.3. For documents that are required to be submitted in printed form directly from the issuing authority, the Board will accept electronic copies on a provisional basis pending receipt of the printed original. Acceptance of such substitute documents will be conditioned on the applicant agreeing that there will be good cause for the Board to revoke or suspend the license issued if the Board does not receive the original document within a reasonable period of not ~~less~~ fewer than 90 days, or if there are any material deviations between the provisional document and the printed original later submitted to the Board.

76.0 Applicants requesting to use these special provisions must submit copies of their spouse's orders and other documentation to establish eligibility.

**SECTION ~~Section~~ XI. SPECIAL FEE PROVISION FOR US MILITARY MEMBERS AND THEIR SPOUSES.**

77.0 As provided by 26 V.S.A. § 1401a(4), the established fees for licensure for the professions regulated by the Board will be waived for:

77.1. An individual who is a member of the US Armed Forces and whose home of record is Vermont at the time of application to be licensed;

77.2. An individual who practices a profession licensed by the Board with the US Armed Forces and who is assigned to Vermont to practice that profession, so long as assigned to Vermont-;

77.3. The spouse of a US Armed Forces member who is ordered to a duty station in Vermont so long as their spouse continues to be assigned to Vermont.

78.0 Eligibility for the fee waiver is determined at the time that the fee is due and continues through the end of the licensing period regardless of whether the military member is assigned to a different permanent duty station during the period. Individuals who request fee waiver will be required to submit copies of orders or other documentation to establish eligibility.

## **Section XI. RULES FOR REMOTE HEARINGS**

### **79.0 Scope**

79.1 Upon order of the Board of Medical Practice, or a Hearing Officer acting on ~~its~~ the Hearing Officer's own behalf, a hearing may be held by telephone, video, or other electronic means ("Remote Hearings"). If a party objects to having all or part of a hearing conducted as a Remote Hearing the party must submit a written motion within 14 days, or sooner if specified in the order scheduling the remote hearing. In ruling on the objection, the Board or Hearing Officer shall consider the factors set forth in Vermont Rule of Civil Procedure 43.1. This section sets forth procedures for conducting Remote Hearings.

79.2 All other Sections of the Board of Medical Practice ("Sections") not modified herein continue to apply. In the case where a standard set forth for Remote Hearings conflicts with a standard set forth in other sections, the standards in this section shall govern.

### **80.0 Pre-Hearing Administration**

## **80.1 Hearing Notice**

80.1.1 In addition to the other information required to be included in a notice of a hearing pursuant to 3 V.S.A. § 809 and 26 V.S.A. § 1372(b)(2) the notice of a remote hearing shall contain instructions and information, including phone numbers and website links and addresses, for participating in the remote hearing by web-based visual and audio communication or by telephone. If the telephone numbers and/or website links and addresses for remote participation are not established at the time a notice is issued, the notice may instead state that the hearing will be held by remote means, that the telephone numbers and or website information will be provided to parties no later than seven days prior to the hearing, and that the information will be publicly posted on the Board's website no-less fewer than seven days prior to the hearing.

80.1.2 The notice of a remote hearing shall contain contact information for the Docket Clerk or another Board staff member who can be contacted during the hearing if a party encounters any difficulties with remote participation.

80.1.3 The notice shall instruct a party how to contact the Docket Clerk if the party is unable to participate in the hearing remotely.

80.1.4 A party may request a continuance in accordance with Section 40.2.2 if the party is unable to participate remotely in the hearing. The Board, hearing panel, or presiding officer shall determine whether to grant the motion for a continuance consistent with Section 40.2.2.

80.1.5 If a party needs a modification or an accommodation to be made to participate in the hearing remotely, the party may file a request. The non-requesting party shall be notified of the request for an accommodation or modification. If a requested accommodation or modification will substantially adversely affect the rights of the non-requesting party, the hearing panel shall determine whether to permit the accommodation or modification. For requested accommodations and modifications that will not adversely affect the rights on the non-requesting party, the Docket Clerk may approve accommodations or modifications after providing notice of the request to the non-requesting party.

## **80.2 Pre-Hearing Filings**

80.2.1 Prior to the beginning of a hearing, documents may be filed by sending the filing to the Docket Clerk as an attachment to an email, by regular mail, or by facsimile. Regardless of the method of delivery, documents are only deemed filed upon receipt by the Docket Clerk.

80.2.2 Unless a different discovery and hearing schedule is issued by a hearing officer, filings submitted prior to a hearing must be received by the Docket Clerk no later than noon on the last business day prior to the scheduled hearing. Filings not received by the Docket Clerk by noon on the last business day prior to the scheduled hearing must be introduced at the hearing in accordance with Section 81.2.2.

80.2.3 Objections to the admissibility of pre-filed exhibits and responses to motions may be made at the scheduled hearing unless a discovery and hearing schedule issued by a hearing officer requires objections and responses to be filed by an earlier date. Objections to the admissibility of the pre-filed exhibit and responses to motions may also be made in writing by submitting a written objection or response to the Docket Clerk by noon on the last business day prior to the scheduled hearing.

80.2.4 Filings submitted prior to a hearing shall be served on the other party on the same day the filing is submitted to the Docket Clerk and using the same method of delivery unless otherwise agreed by the parties.

80.2.5 The procedures regarding electronic introduction of filings at a hearing set forth in Section 81.2.2 shall be followed.

### **80.3 Service**

80.3.1 Except for filings that are required to be served by certified mail, filings may be served on the other party via email and do not require regular mail or personal service. Service by regular mail and personal service remain acceptable means of service. The filing shall be served on the other party using the same method of delivery that is used to submit the filing to the Docket Clerk unless otherwise agreed by the parties.

80.3.2 Filings that are required by statute or other sections of this rule to be served by certified mail must be served by certified mail.

### **80.4 Form**

80.4.1 The subject line of the email containing a filing as an attachment shall indicate the name of the respondent.

80.4.2 A signature block containing the submitting party's typed-in name preceded by "/s/," or an electronic facsimile of the submitting party's signature, a scanned copy of it, or another form of electronic signature as



defined in 9 V.S.A. § 271(9), will serve as a party's signature on pleadings, motions, and other documents that must be filed with a signature. This exception does not apply to affidavits, verified pleadings, or other signatures that must be notarized by statute.

80.4.3 Exhibits submitted for use during a hearing shall be marked for identification by the party submitting the exhibit. The respondent shall mark exhibits using letters and the State shall mark exhibits using numbers.

## **80.5 Timing**

80.5.1 Filings sent by email will be considered filed on the date sent if the email is received before 4:30 pm.

80.5.2 Nothing in these remote hearing rules extends filing deadlines.

## **81.0 Hearings Before a Hearing Panel**

### **81.1 Hearing Procedures**

#### **81.1.1 Prior to Hearing**

81.1.1.1 Prior to the scheduled hearing the Docket Clerk shall send the parties an email with the specification of charges, the answer, and applicable prehearing orders.

81.1.1.2 By noon on the last business day prior to the scheduled hearing, the parties and the members of the hearing panel shall provide the Docket Clerk a phone number and email address at which the party or board member can be reached during the remote hearing.

#### **81.1.2 Commencement of Hearing**

81.1.2.1 A party is responsible for connecting to the remote hearing via the web-based audio and visual system or telephone number provided in the hearing notice. Parties shall participate in the scheduled hearing using audio communication, either web-based or telephone, at a minimum. A hearing officer may order a party to participate using video upon request of a party and showing of a reasonable basis for the request.

81.1.2.2 At the beginning of a scheduled hearing, the hearing officer shall confirm the presence of both parties and their representatives, when applicable.

81.1.2.3 Parties shall be present at the time provided in the hearing notice via the web-based audio and visual communication link or by telephone. If there is more than one hearing scheduled, the order of hearings will be decided by the hearing officer. The first hearing shall begin at the time stated on the hearing notice. Subsequent hearings will occur after the conclusion of the previous hearing.

81.1.3 Hearing Conduct.

81.1.3.1 Scheduled hearings shall be conducted in accordance 1 V.S.A. Chapter 5 and 26 V.S.A. Chapter 23.

81.1.3.2 At the beginning of the hearing, upon request from the hearing officer, each party shall state their full name for the record.

81.1.3.3 The parties shall keep the audio connection through which the party is participating in the hearing muted while not speaking.

81.1.3.4 If a party is not able to hear the hearing officer, hearing panel, or the other party, the party shall un-mute their audio communication system and notify the hearing officer.

81.1.3.5 The hearing officer shall administer oaths and affirmations, as required by law, using the audio and, if available, visual communication systems.

81.1.4 Hearing Panel Members.

81.1.4.1 When participating in a hearing remotely, hearing panel members shall comply with the requirements of 26 V.S.A. § 1318.

81.1.4.2 By noon on the day prior to the scheduled hearing, each hearing panel member shall provide to the Docket Clerk an email address for a current email account that the member can access during the hearing.

81.1.4.3 During a scheduled hearing, the Docket Clerk shall send all filings and required written communications to the hearing

panel members at the email address provided to the Docket Clerk.

81.1.4.4 During a scheduled hearing, hearing panel members shall monitor the email account submitted to the Docket Clerk, and immediately review emails received from the Docket Clerk and other Board Office staff.

## **81.2 Record**

81.2.1 Recording and Transcript. The hearing shall be recorded. Parties may request a transcript from the Docket Clerk. The party requesting a copy of the transcript must pay to the Board Board Office- the Office the estimated cost of producing a copy of the transcript.

### **81.2.2 Introduction of Documents During Hearing**

81.2.2.1 All filings to be considered by the hearing panel during a hearing shall be filed with the Docket Clerk in advance of the scheduled hearing in accordance with Section 80.2.1, or during the hearing in accordance with the procedures set forth in this subsection. Filings that are not received by the Docket Clerk by noon on the last business day prior to the scheduled hearing must be submitted during the hearing.

#### **81.2.2.2 Exhibits**

81.2.2.2.1 Exhibits proffered during a hearing that a party wishes to offer to be admitted as evidence shall be emailed as an attachment to the Docket Clerk and the other party. The form of the exhibit shall comply with the form requirements of Section 80.4.

81.2.2.2.2 Once the proffered exhibit is received by the Docket Clerk, the Docket Clerk shall email the exhibit as an attachment to the hearing officer presiding at the hearing and to the other, non-filing party.

81.2.2.2.3 After receipt of the email from the Docket Clerk with the exhibit attached, the hearing officer and the other, non-filing party shall have a reasonable amount of time, as determined by the hearing officer, to review the exhibit.

81.2.2.2.4 The non-filing party shall have the opportunity to

oppose the admission of an offered exhibit.

81.2.2.2.5 The hearing officer shall rule on whether to admit the exhibit in accordance with Section 40.4 and 3 V.S.A. § 810.

81.2.2.2.6 If the hearing officer rules that an exhibit is to be admitted into evidence, the Docket Clerk shall send an email with the exhibit attached to all members of the hearing panel.

81.2.2.2.7 Members of the hearing panel shall not retain any copies, including electronic or physical copies, of the exhibit after the conclusion of the hearing.

### 81.2.2.3 Motions

81.2.2.3.1 Written motions made during a hearing shall be emailed as an attachment to the Docket Clerk and the non-filing party. Motions may also be made orally during a hearing.

81.2.2.3.2 A written motion shall be signed in accordance with Section 80.4.2.

81.2.2.3.3 Upon receipt of a written motion during a hearing, the Docket Clerk shall send the motion to the hearing officer and the hearing panel members.

81.2.2.3.4 The non-filing party shall have the opportunity to respond to a motion.

81.2.2.3.5 The hearing officer shall decide whether to grant or deny a motion.

### 81.3 Witnesses

81.3.1 Witnesses called by a party shall testify by telephone or via web-based audio or visual communication.

81.3.2 The party calling the witness shall be responsible for providing the witness with the necessary information for participating in the scheduled hearing, including all necessary phone numbers, email addresses, and website addresses. It is the responsibility of the party calling the witness to ensure that the witness is available when called upon to testify during the scheduled hearing.

81.3.3 The party calling the witness shall provide the Docket Clerk with a phone number and email address for the witness. In the event of technical challenges or a need to dismiss and then recall a witness, the Docket Clerk shall telephone the witness with further instructions about when the witness is recalled to testify.

#### **81.4 Deliberative Session**

81.4.1 The hearing panel shall have the opportunity to engage in deliberations, as defined in 1 V.S.A. § 310(2), about the contested case presented at the scheduled hearing. Deliberations by the hearing panel may occur in a deliberative session in accordance with 1 V.S.A. § 312(e).

81.4.2 Prior to the scheduled hearing, the Docket Clerk shall email to the hearing panel members and the hearing officer a conference call telephone number or information for an audio and visual communication system link that shall be available only to those participating in deliberations, to be used for the deliberative session.

81.4.3 After the hearing panel votes to enter into a deliberative session, the hearing panel members shall exit the audio and visual communication system or end the telephone call through which the hearing panel member is participating in the hearing. The parties shall remain available on the audio and visual communication system or the telephone during the deliberative session. The hearing panel members shall then use the conference call telephone number or audio and visual communication system link provided by the Docket Clerk prior to the scheduled hearing. The deliberative session shall be held on the medium that is available only to those participating in the deliberations.

81.4.4 At the conclusion of the deliberative session, the hearing panel members shall reconnect to the audio and visual communication system or the telephone line on which the hearing is being held. The hearing officer will notify the Docket Clerk and the parties that the hearing is resuming and shall provide the parties and the Docket Clerk with a reasonable amount of time to resume. Decisions by the hearing panel announced following a deliberative session shall be made by motion and voted upon by the members in an open session on the record.

#### **81.5 Hearing Panel Report**

The hearing officer shall prepare a report of the hearing panel's findings of fact and recommendations to the Board in accordance with 26 V.S.A. § 1372(c) and Section 40.5. The Docket Clerk shall serve the report on the parties by sending it as an attachment to an email. The Docket Clerk shall send the report to other individuals on request.

### **82.0 Hearing Before the Board**

#### **82.1 Hearing Procedures**

Effective Date: x/x/2022

#### 82.1.1 Applicability

All of Section 82.0 applies in full to contested hearings before the Board. With regard to hearings before the Board for the purpose of consideration and approval of a stipulation and consent order, only this section, 82.1, applies.

#### 82.1.2 Prior to Hearing

82.1.2.1 Prior to the scheduled hearing, the Docket Clerk shall send the parties an email with the specification of charges, the answer, and applicable pre-hearing orders.

82.1.2.2 By noon on the last business day prior to the scheduled hearing, the parties shall provide the Docket Clerk with a phone number and email address at which the party can be reached in the event of a malfunction during the remote hearing.

#### 82.1.3 Commencement of Hearing

82.1.3.1 A party is responsible for connecting to the remote hearing via the web-based audio and visual system or telephone number provided in the hearing notice. Parties shall participate in the scheduled hearing using audio communication, either web-based or telephone, at a minimum. A hearing officer may order a party to participate using video upon request of a party and showing of a reasonable basis for the request.

82.1.3.2 At the beginning of a scheduled hearing, the hearing officer shall confirm the presence of both parties and their representatives, when applicable.

82.1.3.3 Parties shall be present at the time provided in the hearing notice via the web-based audio and visual communication link or by telephone. If there is more than one hearing scheduled, the order of hearings will be decided by the hearing officer. The first hearing shall begin at the time stated on the hearing notice. Subsequent hearings will occur after the conclusion of the previous hearing.

#### 82.1.4 Hearing Conduct

82.1.4.1 Scheduled hearings shall be conducted in accordance 1 V.S.A. Chapter 5.

82.1.4.2 At the beginning of the hearing, upon request from the hearing

officer, each party shall state their full name for the record.

82.1.4.3 The parties shall keep the audio connection, through which the party is participating in the hearing, muted while not speaking.

82.1.4.4 If a party is not able to hear the hearing officer, a Board member, or the other party, the party shall un-mute their audio communication system and notify the hearing officer.

82.1.4.5 The hearing officer shall identify the Board members who are eligible and participating in the hearing on the record.

82.1.4.6 The hearing officer shall administer oaths and affirmations, as required by law, using the audio and, if available, visual communication systems.

#### 82.1.5 Board Members Hearing the Case

82.1.5.1 When participating in a hearing remotely, Board members shall comply with the requirements of 26 V.S.A. § 1318.

82.1.5.2 By noon on the day prior to the scheduled hearing, each Board member shall provide to the Docket Clerk an email address for a current email account that the member can access during the hearing.

82.1.5.3 During a scheduled hearing, the Docket Clerk shall send all filings and required written communications to the participating Board members at the email address provided to the Docket Clerk.

82.1.5.4 During a scheduled hearing, participating Board members shall monitor the email account submitted to the Docket Clerk, and immediately review emails received from the Docket Clerk and other Board Office staff.

### 82.2 Record

#### 82.2.1 Recording and Transcript

The hearing shall be recorded. Parties may request a transcript from the Docket Clerk. The party requesting a copy of the transcript must pay to the Board Office the estimated cost of producing a copy of the transcript.

## 82.2.2 Introduction of Documents During Hearing

82.2.2.1 All filings to be considered by the Board during a hearing that are not already a part of the record shall be filed with the Docket Clerk in advance of the scheduled hearing in accordance with Section 80.2.1, or during the hearing in accordance with the procedures set forth in this subsection. Filings not received by the Docket Clerk by noon on the last business day prior to the scheduled hearing must be submitted during the hearing.

## 82.2.2.2 Exhibits

82.2.2.2.1 Exhibits submitted during a hearing shall be emailed as an attachment to the Docket Clerk and the other party. The form of the exhibit shall comply with the form requirements set forth in Section 80.4.

82.2.2.2.2 Once the exhibit is received by the Docket Clerk, the Docket Clerk shall email the exhibit as an attachment to the hearing officer presiding at the hearing and the other, non-filing party.

82.2.2.2.3 After receipt of the email from the Docket Clerk with the exhibit attached, the hearing officer and the other, non-filing party shall have a reasonable amount of time, as determined by the hearing officer, to review the exhibit.

82.2.2.2.4 The non-filing party shall have the opportunity to oppose the admission of an offered exhibit.

82.2.2.2.5 The hearing officer shall rule on whether to admit the exhibit in accordance with Section 3940.4 and 3 V.S.A. § 810.

82.2.2.2.6 If the hearing officer rules that an exhibit is to be admitted into evidence, the Docket Clerk shall send an email with the exhibit attached to members of the Board who are hearing the case.

82.2.2.2.7 Members shall not retain any copies, including electronic or physical copies, of the exhibits after the conclusion of the hearing.



### 82.2.2.3 Motions

82.2.2.3.1 Written motions made during a hearing shall be emailed as an attachment to the Docket Clerk and the non-filing party. Motions may also be made orally during a hearing.

82.2.2.3.2 A written motion shall be signed in accordance with Section 80.4.2.

82.2.2.3.3 Upon receipt of a written motion during a hearing, the Docket Clerk shall send the motion to the Board members hearing the case.

82.2.2.3.4 The non-filing party shall have the opportunity to respond to a motion.

82.2.2.3.5 The hearing officer shall decide whether to grant or deny a motion.

### 82.3 Witnesses

82.3.1 Witnesses called by a party shall testify by telephone or via web-based audio or visual communication.

82.3.2 The party calling the witness shall be responsible for providing the witness with the necessary information for participating in the scheduled hearing, including all necessary phone numbers, email addresses, and website addresses. It is the responsibility of the party calling the witness to ensure that the witness is available when called upon to testify during the scheduled hearing.

82.3.3 The party calling the witness shall provide the Docket Clerk with a phone number and email address for the witness. In the event of technical challenges or a need to dismiss and then recall a witness, the Docket Clerk shall telephone the witness with further instructions about when the witness is recalled to testify.

### 82.4 Deliberative Session

82.4.1 The participating Board members shall have the opportunity to engage in deliberations, as defined in 1 V.S.A. § 310(2), about the contested case presented at the scheduled hearing. Deliberations by the

Effective Date: x/x/2022

participating Board members may occur in a deliberative session in accordance with 1 V.S.A. § 312(e).

82.4.2 Prior to the scheduled hearing, the Docket Clerk shall email to the participating Board members and the hearing officer a conference call telephone number or information for an audio and visual communication system link that shall be available only to those participating in deliberations, to be used for the deliberative session.

82.4.3 After the participating Board members vote to enter into a deliberative session, the members shall exit the audio and visual communication system or end the telephone call through which members are participating in the hearing. The parties shall remain available on the audio and visual communication system or the telephone during the deliberative session. The participating Board members shall then use the conference call telephone number or audio and visual communication system link provided by the Docket Clerk prior to the scheduled hearing. The deliberative session shall be held on the medium that is available only to those participating in the deliberations.

82.4.4 At the conclusion of the deliberative session, the participating Board members shall reconnect to the audio and visual communication system or the telephone line on which the hearing is being held. The hearing officer will notify the Docket Clerk and the parties that the hearing is resuming and shall provide the parties and the Docket Clerk with a reasonable amount of time to resume. Decisions by the Board announced following a deliberative session shall be made by motion and voted upon by the members in an open session on the record.

## **82.5 Board Decision**

The Board shall issue a written decision of its findings and conclusions in accordance with 26 V.S.A. § 1374. The Board may have the assistance of the hearing officer in preparing its written decision. 26 V.S.A. § 1353(2).

## **82.6 Appeals**

82.6.1 A party may appeal a decision of the Board in accordance with 26 V.S.A. 1367 and Section 41.3.

82.6.2 Parties may submit written notices and filings to the Docket Clerk, and other parties by email, mail, or facsimile.

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Chapter 1 – Board Rules

Subchapter 1 –

**RULES OF THE BOARD OF MEDICAL PRACTICE**

**SECTION I. GENERAL PROVISIONS**

**1.0 Overview**

**1.1 Purpose**

The purpose of the Board of Medical Practice is to protect the public health, safety and welfare. The Board does this by setting standards for issuing licenses and certifications, by licensing and certifying only qualified applicants, by investigating unprofessional conduct and unlicensed practice, by disciplining and regulating the practices of license and certification holders, and by providing licensees with guidelines, policies, and continuing education requirements.

**1.2 Authority**

This rule is adopted pursuant to 26 V.S.A. § 1351(e).

**1.3 Scope**

This rule establishes requirements for the licensing of physicians, physician assistants, podiatrists, anesthesiologists, and radiologist assistants by the Board of Medical Practice.

**2.0 Definitions**

**2.1** "ABMS" means the American Board of Medical Specialties.

**2.2** "Accredited Medical School" means a medical school accredited by the LCME or the Canadian equivalent.

**2.3** "ACGME" means the Accreditation Council for Graduate Medical Education.

**2.4** "AMA" means the American Medical Association.

**2.5** "Board" means the Board of Medical Practice created by 26 V.S.A. Chapter 23.

**2.6** "Board-approved medical school" means a medical school that:

- 2.6.1 Appears on the official California Recognized Medical Schools list; or

- 2.6.2 A foreign medical school that has been accredited under the system for medical school accreditation established by the Educational Commission for Foreign Medical Graduates (ECFMG) and deemed to meet the minimum requirements substantially equivalent to the requirements of medical schools accredited by the Liaison Committee on Medical Education or the Committee on Accreditation of Canadian Medical Schools; or
- 2.6.3 A medical school that was approved as provided by the standards established by the United States National Committee on Foreign Medical Education and Accreditation Certification, but only if the applicant holds American Board of Medical Specialties board certification, or meets all eligibility requirements for such certification and is only lacking current licensure.
- 2.7 "CACMS" means the Committee on Accreditation of Canadian Medical Schools.
- 2.8 "CFPC" means the College of Family Physicians of Canada.
- 2.9 "CME" means continuing medical education as defined by the Accreditation Council for Continuing Medical Education (ACCME).
- 2.10 "CPME" means Council on Podiatric Medical Education of the American Podiatric Medical Association.
- 2.11 "ECFMG" means the Educational Commission for Foreign Medical Graduates.
- 2.12 "Fifth pathway" means a program of medical education that meets the following requirements:
- 2.12.1 Completion of two years of pre-medical education in a college or university of the United States.
- 2.12.2 Completion of all the formal requirements for the degree corresponding to doctor of medicine except internship and social service in a medical school outside the United States which is recognized by the World Health Organization.
- 2.12.3 Completion of one academic year of supervised clinical training sponsored by an approved medical school in the United States or Canada.
- 2.12.4 Completion of one year of graduate medical education in a program approved by the Liaison Committee on Graduate Medical Education of the American Medical Association.
- 2.13 "FLEX" means the Federation Licensing Examination.
- 2.14 "Foreign medical school" means a legally chartered medical school in a sovereign state other than the United States or Canada.
- 2.15 "Immediate family" means the following: a spouse (or spousal equivalent), parent, grand-parent, child, sibling, parent-in-law, son/daughter-in-law, brother/sister-in-law, step-parent, step-child, step-sibling, or any other person who is permanently

residing in the same residence as the licensee. The listed familial relationships do not require residing in the same residence.

- 2.16** "Lapsed license" means a license that has expired or is no longer valid due to the licensee's failure to complete the requirements for renewal of that license.
- 2.17** "Limited temporary license" means a license issued for the purpose of completing post-graduate training and allows the licensee to practice under the supervision and control of a Vermont-licensed physician in an ACGME-accredited training program.
- 2.18** "LCME" means the Liaison Committee on Medical Education of the AMA.
- 2.19** "LMCC" means the Licentiate of the Medical Council of Canada.
- 2.20** "MCCQE" means Medical Council of Canada Qualifying Examination.
- 2.21** "National Boards" means the examination given by the National Board of Medical Examiners.
- 2.22** "NCCPA" means National Commission for the Certification of Physician Assistants.
- 2.23** "PA" means physician assistant.
- 2.24** "Participating Physician" means a medical doctor or osteopathic physician who holds a full Vermont medical license, who meets the requirements of Vermont law and this rule to be the Participating Physician for a PA, and who has executed a practice agreement to act as the Participating Physician for a Vermont PA.
- 2.25** "Physician" means a medical doctor or holder of an equivalent degree that qualifies a person to be licensed as an allopathic physician. It does not mean doctor of osteopathy when used in this rule unless specified.
- 2.26** "PMLexis" means the Podiatric Medical Licensure Examination for States.
- 2.27** "Professional" means a member of one of the health care professions licensed by the Board: medical doctor; physician assistant; podiatrist; anesthesiologist assistant, and radiologist assistant.
- 2.28** "RCPSC" means the Royal College of Physicians and Surgeons of Canada, which is the accrediting body for postgraduate medical education in Canada.
- 2.29** "RRC" means the Residency Review Committee of the ACGME.
- 2.30** "Specialty Board certification" means the certification granted upon successfully completing the educational and examination requirements of a specialty board of the American Board of Medical Specialties.
- 2.31** "USMLE" means the United States Medical Licensing Examination.
- 2.32** "Verification" means documentation that is provided to the Board that comes directly from the original issuing authority, or recognized successor entity, in a format acceptable to the Board, or from the Federation Credential Verification Service (FCVS) or other record repository as may be recognized by the Board.

2.33 "V.S.A." means Vermont Statutes Annotated.

### 3.0 Hearings Before the Board

- 3.1 **Hearing Panel:** The Executive Director may designate a hearing panel of no fewer than 3 members, with a minimum of one public member and one physician member of the Board, to conduct hearings that would otherwise be heard by the full Board. When a hearing is conducted by a hearing panel, the panel shall report its findings and conclusions to the Board within 60 days of the conclusion of the hearing unless the Board grants an extension.
- 3.2 **Full Board Hearing:** Hearings before the Board require five members, including at least one public member and at least one physician member. Members of a hearing panel designated under section 26 V.S.A. § 1372 shall not participate in or be present during deliberations of the Board but may be present for all other parts of the hearing.
- 3.3 Hearings shall be open to the public, except when required or permitted to be closed pursuant to law.

### 4.0 Applicant's Right to a Written Decision

- 4.1 The Board must document, in writing, all decisions on whether an applicant is granted or denied a license or certification. The Board may stay its decision on an application for a license or certification from an applicant who is the subject of an unresolved licensing board investigation or a criminal complaint in another jurisdiction that involves or relates to the practitioner's care of patients or fitness to practice medicine. If an application is stayed, the Board may require the applicant to update some or all parts of the application when the stay is removed and the application is to be considered.
- 4.2 Whenever the Board intends to deny an applicant a license, it shall first issue a Notice of Intent to Deny, which shall include:
  - 4.2.1 The specific reasons for the license denial;
  - 4.2.2 Notice that the applicant has the right to request a hearing at which the Board shall review the preliminary decision, and that such request must be filed with the Board within 30 days of the date the decision was sent to the applicant.
- 4.3 If the applicant requests a hearing in writing, a hearing panel shall be appointed as provided by 26 V.S.A. § 1372 and 26 V.S.A. § 1398.
- 4.4 At the hearing to review the preliminary decision to deny the license application, the applicant shall be given the opportunity to show compliance with the licensing requirements.
- 4.5 After the hearing, the Board shall affirm or reverse the preliminary decision, and shall issue a final written decision and order setting forth its reasons for the

decision. The decision and order shall be signed by the chair or vice-chair of the Board and the Board shall enter the order. A decision and order is effective upon entry.

- 4.6** Notice of both the preliminary decision and the final decision and order shall be sent to the applicant by certified mail.

## **5.0 Applicant's Right to Appeal**

A party aggrieved by a final decision of the Board may, within 30 days of the decision, appeal that decision to the Vermont Supreme Court, as provided by 26 V.S.A. § 1367, by filing a notice of appeal with the Executive Director of the Vermont Board of Medical Practice. For further rules concerning appeals, see 3 V.S.A., ch. 25 Administrative Procedures and the Vermont Rules of Appellate Procedure.

## **6.0 Fees**

- 6.1** Application fees are established in 26 V.S.A. §§ 374, 378, 1401a, 1662, 1740, and 2862.

**6.2** Physician fee waivers.

**6.2.1** Pro Bono Clinic Waiver. A physician who will limit practice in Vermont to providing pro bono services at a Board-recognized free or reduced fee health care clinic, as provided by 26 V.S.A. § 1401a(c), shall meet all license requirements, but may apply for a waiver of licensing fee, by submitting a fee waiver request to the Board which shall include the following information:

**6.2.1.1** The name and address of the free or reduced fee health clinic(s) where the pro bono services shall be performed;

**6.2.1.2** Certification that the licensee shall perform only pro bono services in Vermont, and shall only perform such services at the listed clinics;

**6.2.1.3** The clinic director's certification that the licensee shall perform only pro bono services at the clinic.

**6.2.2** Medical Reserve Corps Waiver. A physician who will limit practice in Vermont to service with the Medical Reserve Corps, as provided in 26 V.S.A. § 1401a(c) shall meet all license requirements, but may apply for a waiver of licensing fee, by submitting a fee waiver request to the Board using the appropriate form.

**6.2.3** A physician granted a waiver request must reapply for the waiver at each biennial renewal. A physician may obtain a fee waiver under each basis; if volunteering under each basis, the necessary documentation must be submitted for each. The licensee's failure to follow the terms of the certifications submitted or the provisions of this rule may constitute

unprofessional conduct as set forth in 26 V.S.A. §§ 1354 and 1398 and may result in disciplinary action.

## **7.0 Renewing a License or Certification**

- 7.1** Licenses and certifications are renewed on a fixed biennial schedule. A professional must renew his or her license or certification before it lapses. The date on which a license or certification shall lapse is printed on it. 90 days before such date, the Board will provide each professional with notice of renewal to the email address last provided to the Board. If a professional does not complete the renewal application, submit all required documentation, and pay the renewal fee to the Board by the date on which the license or certification shall lapse, the license or certification will lapse automatically.
- 7.2** A professional whose initial license or certification is issued within 90 days of the next-occurring renewal date, will not be required to renew or pay the renewal fee. Instead, the license or certification will be issued with an expiration date at the end of the next full period of licensure or certification. A professional who is issued an initial license or certification more than 90 days prior to the next-occurring expiration date will be required to renew and pay the renewal fee or the license or certification will lapse.
- 7.3** Professionals have a continuing obligation during each two-year renewal period to promptly notify the Board of any change to the answers on the initial or renewal application last filed with the Board, including but not limited to disciplinary or other action limiting or conditioning the license, certification, or ability to practice in any jurisdiction. Failure to do so may subject the professional to disciplinary action by the Board.
- 7.4** Limited training licenses (LTLs) are issued on a fixed annual schedule. Otherwise, these provisions apply to holders of LTLs.
- 7.5** Additionally, specific requirements for renewal as a physician assistant, radiologist assistant, or anesthesiologist assistant are listed in the sections specific to those professions.

## **8.0 Lapsed Licenses or Certifications**

If a license or certification has not been renewed by the required date, it lapses. A professional regulated by the Board may not legally practice in Vermont after a license or certification has lapsed. The professional must halt practice immediately and completely until the license or certification has been reinstated.

## **9.0 Reinstatement of a License or Certification**

- 9.1** Reinstating a License or Certification after It Has Been Lapsed for fewer Than One Year (364 days or fewer).



9.1.1 To seek reinstatement after failing to renew, a professional must complete in full the renewal application and tender it to the Board with any required documentation and a late fee, in addition to the fee required for renewal, within a year of lapsing. The Board may seek or request such additional information as it deems needed to make a determination as to the renewal application. The Board may deny the renewal of a license or certification on grounds of unprofessional conduct as set forth under Vermont law, after notice and opportunity to be heard has been provided to the professional.

**9.2 Reinstating a License or Certification after It Has Lapsed for One Year or More (365 days or more).**

9.2.1 If a license or certification has been lapsed for one year or more the professional must complete a reinstatement application in full and pay the application fee for an initial application. The reinstatement application requires additional information beyond that required in the standard renewal application. This includes but is not limited to the requirement to submit a chronological accounting of all professional activities in other jurisdictions during the period the Vermont license or certification was lapsed.

9.2.2 The professional submitting a renewal for a license or certification lapsed for one year or more must provide:

9.2.2.1 For physicians or any other professional who held hospital privileges, a form completed by the chief of staff of the hospital where privileges were most recently held during the period when the Vermont license was lapsed;

9.2.2.2 For professionals who are required to practice under supervision, a form completed by each supervisor who provided supervision during the period when the Vermont license or certification was lapsed; and

9.2.2.3 A verification from each state in which the professional held an active license or certification during the period when the Vermont license or certification was lapsed.

9.2.3 Reinstatement may be denied on grounds of unprofessional conduct as set forth under Vermont law or for other good cause, after notice and opportunity to be heard has been provided to the professional. The provisions of section 4.0 regarding license denial apply to denial of reinstatement.

**10.0 Stale Applications**

**10.1** An application that becomes stale under these provisions is terminated without Board action and without refund of any fees paid.

- 10.2** An application becomes stale if six months pass from the time that the applicant is notified that additional information or documentation is needed and the information or documentation has not been provided. Once an application has become stale, verifications and documentation as determined by the Board must be resubmitted and the fee must be paid again if the applicant desires to resume the application process.
- 10.3** An application that has been forwarded to the licensing committee may be determined by the licensing committee to be incomplete. An application becomes stale while before the licensing committee if the licensing committee requests additional information and the information is not submitted within sixty days. An applicant may request more time from the licensing committee, which shall rule finally on all matters of whether the application was completed in a timely matter.

### **11.0 Enforcement of Child Support**

The Board licenses or certifies five professions: Physicians, Physician Assistants, Podiatrists, Anesthesiologist Assistants, and Radiologist Assistants. Per 15 V.S.A. § 795, the Board may not issue or renew a professional license or certification to practice these professions or be a trainee if the applicant is under an obligation to pay child support and is not in good standing or in full compliance with a plan to pay the child support due. The Board requires that each applicant for the issuance or renewal of a license or certification sign a statement that the applicant is not under an obligation to pay child support or is in good standing with respect to or in full compliance with a plan to pay any and all child support payable under a support order as of the date the application is filed.

### **12.0 Tax Compliance**

The Board licenses or certifies five professions: Physicians, Physician Assistants, Podiatrists, Anesthesiologist Assistants, and Radiologist Assistants. Per 32 V.S.A. § 3113, the Board may not issue or renew a professional license or certification to practice those professions or be a trainee unless the applicant is in good standing with respect to or in full compliance with a plan to pay any and all taxes due. The Board requires that each applicant for the issuance or renewal of a license or certification sign a statement that the applicant is in good standing with respect to or in full compliance with a plan to pay any and all taxes due.

### **13.0 Professional Standards.**

#### **13.1 Change of Name or Address.**

All professionals are responsible for notifying the Board within 10 days of any change of name, mailing address, or telephone number. All professionals who hold a Vermont license or certification are required to keep the Board informed of a current email address; email is used to provide important notices to all professionals regulated by the Board. A professional who holds a Vermont

license but who has not been engaged in practice in Vermont shall notify the Board at least 30 days in advance of the intended starting date of the Vermont practice.

### **13.2 Self-Prescribing and Prescribing for Family Members.**

13.2.1 Controlled Substances: It is unacceptable medical practice and unprofessional conduct for a licensee to prescribe or dispense controlled substances listed in US Drug Enforcement Agency ("D.E.A.") Schedules II, III, or IV for the licensee's own use. It also is unacceptable medical practice and unprofessional conduct for a licensee to prescribe or dispense Schedule II, III, or IV controlled substances to a member of the licensee's immediate family, as defined in subsection 2.16, except in a bona fide emergency, of short-term and unforeseeable character. Prescribing for self or immediate family members, as defined in this rule, constitutes a violation of 26 V.S.A. § 1354.

13.2.2 Non-controlled Substances: It is discouraged for a licensee to prescribe or dispense non-controlled prescription substances for the licensee's own use. It is also discouraged for licensee to prescribe or dispense non-controlled prescription substances to a member of the licensee's immediate family, as defined in subsection 2.16. Licensees who do prescribe non-controlled substances for their own use or that of a family member are required to meet all standards of appropriate care, including proper establishment of a professional relationship with the patient and maintenance of appropriate patient records.

**13.3 Methadone Prescribing.** Federal law prohibits prescribing methadone outside of a certified opioid treatment program, unless it is prescribed or dispensed as an analgesic. A licensee must include the words "FOR PAIN" in a prescription for methadone.

## **SECTION II. PHYSICIANS**

### **14.0 License Required**

No one may practice medicine in the state unless licensed by the Board, or when exempt under the provisions contained in 26 V.S.A. § 1313. Before allowing a physician who is not licensed in Vermont to practice pursuant to the exemption stated in 26 V.S.A. §1313(a)(4), a medical school or teaching hospital must first verify through primary source verification the physician's qualifications and credentials, including that the physician has a valid, unrestricted license to practice medicine in the current jurisdiction of practice. Such documentation shall be submitted to the Executive Director for review; the Executive Director may approve the exemption or may elect to refer the matter to the Licensing Committee and/or Board. If referred directly to the Board, there is no requirement for review by the Licensing Committee.

Effective Date: x/x/2022

## **15.0 Requirements for Licensing**

- 15.1** In order to be granted a license to practice medicine an applicant must meet the following eligibility requirements:
- 15.1.1 At least 18 years of age;
  - 15.1.2 Competent in speaking, writing, and reading the English language;
  - 15.1.3 Completed high school and at least two years of college or the equivalent;
  - 15.1.4 A graduate of a Board-approved medical school, or a medical school accredited by the LCME or CACMS;
  - 15.1.5 Meets the Board's criteria for Postgraduate Training;
  - 15.1.6 Meets the Board's criteria for License by Examination; or License by Appointment to the faculty of a Vermont medical college; and
  - 15.1.7 Meets requirement for moral character and professional competence.
- 15.2** For each applicant for licensure as a physician the Board must receive, in a form satisfactory to the Board:
- 15.2.1 A complete online application;
  - 15.2.2 Proof of identity and that the applicant is at least 18 years of age as evidenced by a certified birth certificate or a copy of a naturalization certificate;
  - 15.2.3 If applicable, an ECFMG certificate. An ECFMG certificate is required if an applicant graduated from a medical school outside of the United States or Canada, unless the applicant successfully completed a fifth pathway program.
  - 15.2.4 Evidence of completion of high school and at least two years of college;
  - 15.2.5 For each medical school attended, the Uniform Application Medical School Verification Form for primary source documentation of graduation from a Board-approved medical school or a medical school accredited by the LCME or CACMS;
  - 15.2.6 For each postgraduate training program attended, the Uniform Application Postgraduate Training Verification Form for primary source documentation of all postgraduate training;
  - 15.2.7 Verification of every medical license ever held in any state, territory, or province to practice medicine at any level, including permanent, temporary, and training licenses.
  - 15.2.8 Verification of medical licensing examination results; sent directly by the applicable examining authority in accordance with the Board of Medical Practice examination requirements;

- 15.2.9 Board of Medical Practice Reference Forms completed and submitted directly by the chief of service (or equivalent) and two other active physician staff members of the hospital where the applicant currently holds, or most recently held, privileges. If an applicant has not held privileges at a hospital within two years of the date of submission of the application, or cannot provide references as indicated, the Board in its discretion may accept references from other physicians who have knowledge of the applicant's moral character and professional competence. An applicant shall indicate in the application if asking the Board to accept references that do not meet the above-stated standard;
- 15.2.10 The Uniform Application Affidavit and Authorization for Release of Information Form;
- 15.2.11 American Medical Association Profile. This must be a current Profile issued within 60 days of submission of the application;
- 15.2.12 National Practitioner Data Bank Self-Query Report. This must be a current Self-Query Report issued within 60 days of submission of the application. Information about obtaining a Self-Query Report is in the instructions to the application;
- 15.2.13 The applicant's CV (curriculum vitae) or résumé; and
- 15.2.14 If specialty board-certified, a copy of the specialty board certificate.
- 15.3** All applicants must submit a completed Board application package, provide required documentation as specified in the application form or requested by the Board, and pay the application fee. Documents submitted with the application become part of the official record and will not be returned.
- 15.4** At the discretion of the licensing committee or the Board any applicant may be required to be interviewed by a Board member.

## **16.0 Satisfaction of Licensing Requirements by Practice in Another United States Jurisdiction**

- 16.1** A physician can meet the licensing requirements stated in 15.1.2 and 15.1.6 by demonstrating that:
  - 16.1.1 they have been practicing medicine full-time in another United States jurisdiction while continuously holding a full, unrestricted, and unlimited license in good standing for at least three years preceding the day on which the Vermont license is to be granted; and
  - 16.1.2 they meet the education and training requirements stated in 26 V.S.A. § 1395(a).
- 16.2** For each applicant for licensure as a physician under 26 V.S.A. § 1395(a) the Board must receive, in a form satisfactory to the Board:

- 16.2.1 A complete online application;
- 16.2.2 Proof of identity and that the applicant is at least 18 years of age as evidenced by a certified birth certificate or a copy of a naturalization certificate;
- 16.2.3 For each medical school attended, the Uniform Application Medical School Verification Form for primary source documentation of graduation from a Board-approved medical school or a medical school accredited by the LCME or CACMS;
- 16.2.4 For each postgraduate training program attended, the Uniform Application Postgraduate Training Verification Form for primary source documentation of all postgraduate training;
- 16.2.5 Verification of the medical license that the applicant relies upon to qualify to apply under the endorsement procedure;
- 16.2.6 Board of Medical Practice Reference Forms completed and submitted directly by the chief of service (or equivalent) and two other active physician staff members of the hospital where the applicant currently holds, or most recently held, privileges. If an applicant has not held privileges at a hospital within two years of the date of submission of the application, or cannot provide references as indicated, the Board in its discretion may accept references from other physicians who have knowledge of the applicant's moral character and professional competence. An applicant shall indicate in the application if asking the Board to accept references that do not meet the above-stated standard;.
- 16.2.7 The Uniform Application Affidavit and Authorization for Release of Information Form;
- 16.2.8 American Medical Association Profile. This must be a current Profile issued within 60 days of submission of the application;
- 16.2.9 National Practitioner Data Bank Self-Query Report. This must be a current Self-Query Report issued within 60 days of submission of the application. Information about obtaining a Self-Query Report is in the instructions to the application;
- 16.2.10 The applicant's CV (curriculum vitae) or résumé; and
- 16.2.11 If specialty board-certified, a copy of the specialty board certificate.
- 16.3** All applicants must submit a completed Board endorsement application package, provide required documentation as specified in the application form or requested by the Board, and pay the application fee. Documents submitted with the application become part of the official record and will not be returned.
- 16.4** At the discretion of the licensing committee or the Board any applicant may be required to be interviewed by a Board member.

## 17.0 License by Examination

**17.1** All applicants entering the examination system after December 31, 1994 must use and pass the USMLE three-step sequence. Primary source documentation of a passing grade on each of the three USMLE steps is required. All three steps must be completed within seven (7) years of the first examination attempt, or ten (10) years if the applicant completed an MD/PhD or equivalent program. Applicants may retake USMLE Step I and II multiple times without limit until successful, subject to the time limit of seven or ten years. Applicants may retake USMLE Step III two times, for a total of three attempts. Additional attempts, even if successful, do not qualify the applicant for a Vermont license unless granted a waiver as provided in section 17.2 below.

**17.2** Applicants who do not meet the requirement to have passed all three Steps of the USMLE within a seven-year period, or ten-year period for an MD/PhD applicant, or have required more than three attempts to pass Step III may apply for a waiver of the requirement if they meet all the following criteria:

17.2.1 Hold a full unrestricted license in another U.S. or Canadian jurisdiction;

17.2.2 Hold an active ABMS, RCPSC, or CFPC specialty certification; and

17.2.3 Have successfully completed an ACGME, RCPSC, or CFPC approved post-graduate training program.

**17.3** Applicants who first took a medical licensing exam on or before December 31, 1994, must satisfy at least one of the following criteria, as evidenced by primary source documentation:

17.3.1 Applicants who successfully completed the National Boards Parts 1, 2, and 3 or FLEX Component 1 and 2 with a grade of at least 75 on all segments of either exam meet the examination criteria of the Board. All segments of either exam must have been completed within seven (7) years. The final clinical segment (Part 3 or Component 2) must have been passed on the first or second attempt to qualify for a Vermont license; or

17.3.2 Applicants who entered, but did not complete, either the NBME or FLEX sequences before the discontinuance of FLEX or National Boards may combine some parts (components) from the two discontinued exam systems with USMLE for completion of an acceptable examination sequence. Each of the following combinations are acceptable:

(1)	NBME Part I or USMLE Step 1	plus	NBME Part II or USMLE Step 2	plus	NBME Part III or USMLE Step 3
OR					
(2)	FLEX Component I	plus	USMLE Step 3		
OR					

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(3)	NBME Part I Or USMLE Step 1	plus	NBME Part II Or USMLE Step 2	plus	FLEX Component 2
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17.3.3 Applicants who took and passed a medical licensing examination administered by one of the United States or its Territories with a minimum passing grade of 75% meet the examination requirements.

17.3.4 Graduates of Canadian medical schools, in addition to the above examination options, can qualify for a Vermont license by successfully passing the MCCQE, Part I and Part II.

## **18.0 License by Faculty Appointment**

The Board may license without examination a resident of a foreign country who is a licensed physician in good standing in the country of residence and who presents verifiable evidence of outstanding academic and clinical achievements and potential. To qualify for a Vermont license under this rule the applicant must present evidence that the applicant will be appointed to the University of Vermont College of Medicine full-time faculty at the rank of associate professor or higher. The license is issued only for the duration of the faculty appointment and is dependent on favorable faculty evaluations conducted according to the usual College of Medicine procedures. The licensee shall share these evaluations with the Board if requested.

## **19.0 Postgraduate Training Requirements**

**19.1** Graduates of accredited U.S. or Canadian medical schools must have successfully completed two years of postgraduate training accredited by the ACGME, RCPSC, or CFPC. The training should be a progression of directed experience. Multiple first-year programs are not acceptable. Applicants who are currently licensed and in good standing in another U.S. or Canadian jurisdiction who were first licensed to practice in the U.S. or Canada on or before December 31, 1994, must have successfully completed one year of a postgraduate training program accredited by the ACGME, RCPSC, or CFPC.

**19.2** Graduates who hold a diploma from a Board-approved medical school outside of the United States or Canada must complete one of the following additional requirements:

**19.2.1** Three years of postgraduate training in programs approved by the ACGME, the RCPSC, or the CFPC. The training should be a progression of directed experience, preferably in a single program. Multiple first year programs are not acceptable;



19.2.2 Specialty certification by a specialty board recognized by the ABMS, the RCPSC, or CFPC may be substituted for 19.1 or

19.2.3 Three years as a full-time faculty member at or above the level of assistant professor in a clinical discipline in a medical school approved by the LCME, with documentation of the applicant's clinical training and competence and the school's method of evaluating that competence. The evaluation must be part of the school's normal established procedure. The documentation shall include letters from the chairperson and two senior members of the applicant's department, special honors or awards that the applicant has achieved, and articles that the applicant has published in reputable medical journals or medical textbooks.

**19.3** Fifth Pathway graduates are not required to submit an ECFMG certificate and are eligible for a Vermont license after three years of postgraduate training in an ACGME, RCPSC, or CFPC-accredited program.

## **20.0 Application to Take USMLE in Vermont**

**20.1** The Federation of State Medical Boards and the National Board of Medical Examiners administer the United States Medical Licensing Examination (USMLE). Applicants for Vermont licensure shall contact the Federation to apply to take the USMLE.

**20.2** General eligibility requirements to take USMLE Step 3 are:

20.2.1 Certification of graduation from an accredited medical school in the United States or Canada, or a Board-approved medical school located in another country;

20.2.2 Verification of ECFMG certificate if the applicant is a graduate of a medical school outside the United States or Canada. Fifth Pathway graduates are not required to submit an ECFMG certificate;

20.2.3 Certification that the applicant has completed at least seven months of postgraduate training in a program approved by the ACGME, the RCPSC, or the CFPC.

## **21.0 Limited Temporary License**

**21.1** A limited temporary license is issued for the purpose of completing postgraduate training and allows the licensee to practice under the supervision and control of a Vermont-licensed physician in an ACGME-accredited training program. The applicant must be enrolled in an ACGME-accredited program of postgraduate training or in sub-specialty clinical fellowship training in an institution that has an accredited program in the parent specialty. A limited temporary license may be renewed or reissued, upon submission of a completed renewal application.

**21.2** Application for a limited temporary license shall include:

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- 21.2.1 Completed online application;
- 21.2.2 The required fee;
- 21.2.3 A copy of the applicant's medical school diploma;
- 21.2.4 A supervising physician's/ program director's statement, acknowledging statutory responsibility for the applicant's negligent or wrongful acts or omissions;
- 21.2.5 Direct verification of medical education;
- 21.2.6 ECFMG if applicable;
- 21.2.7 Verification of other state licensure;
- 21.2.8 NPDB self-query; and
- 21.2.9 Any additional forms or documentation required by the Board.

## **22.0 Professional Standards Specific to Physicians**

Grounds for disciplinary action are set forth in 26 V.S.A. §§ 1354, 1398, and 1739a. Additional grounds are set forth in 3 V.S.A. § 129a and 18 V.S.A. § 1852.

- 22.1 Additional professional standards that apply to all professionals are in Section 13.0 of this rule.
- 22.2 It is unprofessional conduct for a physician to delegate professional responsibilities to a person whom the physician knows or has reason to know is not qualified by training, experience, education, or licensing credentials to perform. See 26 V.S.A. § 1354(a)29.
- 22.3 Requesting or Receiving a Prescription from a Physician Assistant for whom the Physician Acts as Participating Physician. A physician shall not request or receive the dispensing of or a prescription for controlled substances listed in D.E.A. Schedules II, III, or IV for the physician's own use from a physician assistant for whom the physician acts as participating physician.
- 22.4 Requesting or Receiving a Prescription from an Advanced Practice Registered Nurse with Whom the Physician Has an Agreement to Act as the Collaborating Provider. A physician shall not request or receive the dispensing of or a prescription for controlled substances listed in D.E.A. Schedules II, III, or IV for the physician's own use from an advanced practice registered nurse with whom the physician has an agreement to act as the collaborating provider.

## **23.0 Continuing Medical Education**

### **23.1 Minimum Education Requirement - Hours and Subjects**

- 23.1.1 Each physician applying for renewal of a license to practice medicine must complete at least thirty hours of qualifying CME during the most recent two-year licensing period.
- 23.1.1.1 The licensee is not required to file documentation of CME that verifies completion at the time that it is reported, however, it is the licensee's responsibility to retain documentation for four years from the time the information is submitted to the Board.
- 23.1.1.2 The Board may audit records of CME for up to four years from the time of submission; a licensee is required to promptly submit documentation of CME completion in response to a request from the Board.
- 23.1.2 For physicians licensed in Vermont for the first time during the most recent two-year licensing period, if licensed in Vermont for less than one year, there is no requirement for CME at the time of the first renewal. If licensed for one year or more during that initial period of Vermont licensure, the licensee shall complete at least 15 hours of approved CME activity and those 15 hours shall include any subject-specific CME required by this rule.
- 23.1.3 Time is calculated from the date the license was approved by the Board until the date of expiration. Any physician who has not completed the required continuing medical education shall submit a make-up plan with a renewal application, as specified in this rule.
- 23.1.4 Except for required subjects that are mandated by this rule, all CME hours completed in satisfaction of this requirement shall be designed to assure that the licensee has updated knowledge and skills within their own specialties and also has kept abreast of advances in other fields for which patient referrals may be appropriate. A licensee's "own area of practice" shall not be interpreted narrowly; it is acknowledged that training in many other fields may be reasonably related to a practitioner's own specialties.
- 23.1.5 Required Subject: Hospice, Palliative Care, Pain Management. 26 V.S.A. § 1400(b) mandates that the Board of Medical Practice shall require physician licensees to provide "evidence of current professional competence in recognizing the need for timely appropriate consultations and referrals to assure fully informed patient choice of treatment options, including treatments such as those offered by hospice, palliative care, and pain management services." Accordingly, all physician licensees who are required under this rule to complete CME shall certify at the time of each renewal that at least one of the hours of qualifying CME activity has been on the topics of hospice, palliative care, or pain management services.
- 23.1.6 Required Subject: Prescribing Controlled Substances.
- All physician licensees who are required to certify completion of CME and who prescribe controlled substances shall certify at the time of each

renewal that at least two hours of qualifying CME activity on controlled substances prescribing. The following topics must be covered, as required by Vermont law: abuse and diversion, safe use, and appropriate storage and disposal of controlled substances; the appropriate use of the Vermont Prescription Monitoring System; risk assessment for abuse or addiction; pharmacological and nonpharmacological alternatives to opioids for managing pain; medication tapering and cessation of the use of controlled substances; and relevant State and federal laws and regulations concerning the prescription of opioid controlled substances. Each licensee who is registered with the D.E.A. and who holds a D.E.A. number to prescribe controlled substances, or who has submitted a pending application for one, is presumed to prescribe controlled substances and must meet this requirement.

23.1.7 Licensees who are not in active practice shall still complete CME, including all required subjects, to be relicensed. For purposes of subsection (b), a physician not in active practice may consider the last area of practice as the area of practice to which activity shall relate, or the activity may relate to any intended new area of practice.

23.1.8 Licensees who are members of the armed forces and who are subject to a mobilization and/or deployment for all or part of a licensing cycle will be treated the same as licensees who are licensed for the first time during a licensing cycle. E.g., a licensee whose military mobilization/deployment covers a year or more is not required to complete CME for that cycle. A licensee whose military duties during the two-year cycle total less than one year shall be required to meet the CME requirement of at least 15 hours, including any required subjects.

23.1.9 A licensee who allows a license to lapse by not timely applying for renewal shall certify completion of all CME that would have been required to remain licensed in order to be granted a renewal license.

## **23.2 Qualifying Continuing Medical Education Activities**

23.2.1 CME activities that are approved for American Medical Association Physician's Recognition Award Category 1 Credit AMA PRA Category 1 Credit™ qualify as approved Vermont CME.

23.2.2 Credit for providing training. The Board accepts all AMA PRA Category 1 Credit™ activity. The AMA PRA program grants two hours of credit for each hour of training presented by a physician. The Board recognizes those credits the same as the AMA PRA program.

23.2.3 Certain activities sponsored by the Board may qualify for CME credit even if not designated as AMA PRA Category 1 activities. If CME credit is available, it will be specifically stated by the Board.

23.2.4 Special Rule for holders of a full, unlimited license who are participants in a residency or fellowship program approved by a nationally-recognized

body that approves graduate medical education (GME). Some physicians who are still in a GME program obtain full licensure in addition to a limited temporary license for training. As fully-licensed physicians, if licensed for a year or more (see Section 23.1.2) they must complete at least 15 hours of CME. If licensed the full period, they must complete 30 hours of CME. However, the Board will recognize participation in a GME program as qualifying for CME credit to the extent provided here.

23.2.4.1 The licensee must have successfully completed the program or continue to be in good standing in the GME program throughout the licensing period to have GME count as CME.

23.2.4.2 Successful completion of a year of full-time participation in an approved program during the two-year licensing period may count for 15 hours of CME to be used to satisfy a CME requirement for that licensing period. Licensees who wish to use participation in a GME program to satisfy part of the CME requirement shall submit a letter to the Board stating so and attesting to successful completion of the GME program year.

23.2.4.3 GME students who are fully licensed must meet the subject-specific requirement for hospice, palliative care, or pain management services if fully licensed for a year or more. See section 23.1.5 GME students who are fully licensed for a year or more and who have applied for or hold a D.E.A. number must satisfy the statutory requirement for two hours of CME on controlled substances prescribing. See Section 23.1.6.

### **23.3 Make-Up Plans**

23.3.1 Any physician who has not completed the minimum number of hours of CME, or who has not completed the required subject-specific training, as of the deadline for submission of license renewal applications, will not be granted a renewal license unless the application includes an acceptable make-up plan signed by the licensee. The Board Executive Director is authorized to review and determine if make-up plans are acceptable.

23.3.2 An acceptable make-up plan must include a timeline for making up all CME that needs to be completed to satisfy the requirements of this rule. The timeline shall identify the approved activities that the licensee plans to attend. The licensee may later substitute activities, but the plan shall indicate that it is the licensee's good faith intent to complete the activities listed at the time of submission. A licensee shall have up to one hundred twenty (120) days to complete the CME make-up plan.

23.3.3 Any licensee who will not complete a make-up plan within the time specified by the plan shall contact the Board at least 30 days in advance of the date on which the period will end to notify the Board and submit a revised plan and request for extension of time.

- 23.3.3.1 The request for extension of time must include an explanation of the reasons why the licensee was unable to complete the required training in accordance with the plan.
- 23.3.3.2 Extensions of the make-up plan period are limited to 90 days, during which the licensee shall complete the required CME. Further extensions will be granted only for good cause shown, for reasons such as: serious illness of the licensee or a family member; death of an immediate family member; significant personal hardship, such as a house fire; significant and ongoing medical staff shortage during the make-up period; or similarly compelling reasons.
- 23.3.3.3 The Board may delegate to the Board Executive Director the authority to approve requests to extend the time for a make-up plan in accordance with this rule. Any request for extension not granted by the Executive Director shall be considered by the Board.
- 23.3.4 CME activity completed as part of a make-up plan does not count toward satisfaction of the requirement to complete CME during that current licensing cycle; activity may only be counted once. If a multi-hour activity is performed partly in satisfaction of a make-up plan and partly for the CME requirement associated with the current licensing cycle, the licensee shall clearly document the allocation.
- 23.4 Failure to Certify Completion of Required CME, File a Make-Up Plan, or Complete a Make-Up Plan**
- 23.4.1 A licensee who has failed to submit certification of completion of CME as required by law and this rule, or who having failed to certify completion of CME has failed to submit a make-up plan with a license renewal application, will be notified of such failure and have not more than 15 days from receipt of notice to file with the Board either a certification of completion of CME or a make-up plan.
- 23.4.2 A licensee who fails to file a certificate of completion of CME at the end of a make-up period, or to file a request for an extended make-up period, shall be notified of such failure and have not more than 15 days from receipt of notice to file with the Board either a certificate of completion of CME or another request for extension of time in which to make up CME.
- 23.4.3 A licensee who submits a certificate of completion at the time of submission of the license renewal application, or who has filed an acceptable make-up plan with the renewal application and is in the make-up period, or who having failed to complete the first make-up plan has received approval from the Board for an extended make-up period that has not yet expired, is in good standing with respect to CME requirements.

23.4.4 Any licensee not in good standing with respect to CME requirements is subject to investigation by the Board for unprofessional conduct.

### **23.5 Grounds for Disciplinary Action**

23.5.1 Grounds for disciplinary action include the conduct set forth in 26 V.S.A. §§ 1354, 1398, and 18 V.S.A. § 1852.

### **23.6 Disciplinary Action**

23.6.1 All complaints and allegations of unprofessional conduct shall be processed in accordance with Section V of this rule.

23.6.2 After notice and an opportunity for hearing, the Board may take disciplinary action against any applicant or physician found guilty of unprofessional conduct, as provided by 3 V.S.A. § 809, and 26 V.S.A. §§ 1361(b), including but not limited to:

23.6.2.1 Reprimand, suspend, revoke, limit, condition, deny or prevent renewal of license;

23.6.2.2 Required completion of continuing education;

23.6.2.3 Required supervised training or practice for a specified period of time or until a satisfactory evaluation by the supervising physician has been submitted to the Board.

### **23.7 Right to Appeal**

23.7.1 A party aggrieved by a final decision of the Board may, within 30 days of the decision, appeal that decision by filing a notice of appeal with the Executive Director of the Vermont Board of Medical Practice, as provided by 26 V.S.A. § 1367 and 3 V.S.A. § 815.

## **SECTION III. PHYSICIAN ASSISTANTS**

### **24.0 Introduction**

24.1 Physician assistants practice medicine pursuant to a written practice agreement with a participating physician. Physician assistant practice is limited to medical care within the physician assistant's education, training, and experience, and subject to any restrictions stated in the practice agreement.

24.2 As provided by 26 V.S.A. § 1739, physician assistants are responsible for their own medical decision making. A participating physician in a practice agreement with a physician assistant is not, by the existence of the practice agreement alone, legally liable for the actions or inactions of the physician assistant. However, that statutory language does not otherwise limit the liability of the participating physician.

### **25.0 Initial Licensure**

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- 25.1 For each applicant for licensure as a physician assistant the Board must receive, in a form satisfactory to the Board:
- 25.1.1 A complete online application;
  - 25.1.2 Proof of identity and that the applicant is at least 18 years of age as evidenced by a certified birth certificate or a copy of a naturalization certificate;
  - 25.1.3 Verification of certification or licensure in all other states, territories, or provinces where currently or ever certified or licensed to practice at any level, including permanent, temporary, and training licenses or certifications;
  - 25.1.4 Two reference forms from allopathic or osteopathic physicians, including one from a physician who supervised or worked closely with the applicant at their most recent practice site.
    - 25.1.4.1 Applicants with fewer than six months of substantially full-time (at least 30 hours per week) practice must provide a reference from their physician assistant training program director in place of one of the references from a supervising physician. A reference to meet this requirement may be from a physician assistant if the training program director is a physician assistant.
  - 25.1.5 The Board of Medical Practice's Certificate of Physician Assistant Education form for primary source documentation of completion of a Board-approved physician assistant program sponsored by an institution of higher education, completed and submitted by the institution;
  - 25.1.6 An original certification from NCCPA. Primary source documentation of current certification sent directly to the Board by NCCPA;
  - 25.1.7 Completed practice agreement with a qualified participating physician who holds a Vermont license as an allopathic or osteopathic physician (for applications who do not have a current employment offer when applying for licensure, see Section 25.2);
  - 25.1.8 The Uniform Application Affidavit and Authorization for Release of Information Form;
  - 25.1.9 National Practitioner Data Bank Self-Query Report. This must be a current Self-Query Report issued within 60 days of submission of the application. Information about obtaining a Self-Query Report is in the instructions to the application;
  - 25.1.10 The applicant's CV (curriculum vitae) or résumé; and
  - 25.1.11 The required fee.
- 25.2 Upon written request of the applicant, an application may be considered complete and be processed by the Board without a practice agreement. However, if a



license is issued it will be inoperable and the applicant will not be able to engage in Vermont practice until a practice agreement has been received by the Board. Licensees should verify that the Board has received the practice agreement by checking the Board's online system.

- 25.3 At the discretion of the licensing committee or the Board, any applicant may be required to be interviewed by a Board member.

## **26.0 Physician Assistant Renewal**

A physician assistant who is not in active practice may renew an inoperable license but cannot practice until a practice agreement with a participating physician is received by the Board. Each practice agreement between a physician assistant and a participating physician must be reviewed, and if necessary updated, during the 90 days preceding submission of the physician assistant's renewal application. The physician assistant shall maintain documentation to show the date on which the practice agreement was reviewed.

## **27.0 Practice Agreement Requirements**

- 27.1 Practice agreements must meet the requirements of 26 V.S.A. § 1735a. The requirement for a physician to be accessible for consultation by telephone or electronic means at all times when a physician assistant is practicing is also satisfied when a physician is in the same location and available for in-person consultation. A practice agreement may be submitted in hard copy or filed with the Board by email or fax.
- 27.2 A practice agreement must include the Vermont medical license number of the participating physician and the physician assistant.
- 27.3 A practice agreement must be reviewed by the physician assistant and the participating physician or another qualified physician, as provided by 26 V.S.A. § 1735a(d), no less frequently than at the time of the physician assistant's license renewal. The review must be documented in writing at the time that it is completed and signed by the physician assistant and reviewing physician. If changes are made to the practice agreement the revised agreement must be signed by the physician assistant and participating physician and submitted to the Board.
- 27.4 Submission of a New Practice Agreement upon Employment Changes. A new practice agreement must be received by the Board before a physician assistant may practice after a change in employment. A new practice agreement must be submitted to the Board whenever a physician assistant begins practice with a new employer. This includes both leaving one employment and beginning at another and adding a new employer while continuing to work for a current employer. There must be a practice agreement that applies to each practice setting. If a physician assistant's practice agreement includes restrictions that limit its application to a new practice setting with the same employer, such as by geographic location, by department, or by scope of practice allowed, a new

practice agreement must be submitted for a new practice setting beyond those restrictions.

- 27.5 Submission of a New Practice Agreement Upon Unavailability of Participating Physician Who Is a Sole Practitioner. When a physician assistant's participating physician is the only physician in the practice and without prior knowledge becomes unavailable as the result of serious illness, injury, or death, the physician assistant may continue to practice for up to 30 days without entering a practice agreement with a new participating physician. After 30 days the physician assistant may not practice unless a new practice agreement has been submitted to the Board.
- 27.6 Submission of a New Practice Agreement Upon Unavailability of Participating Physician – General Rule. As soon as it is known that a physician assistant's participating physician will be unavailable and is expected to be unavailable for 30 days or more in any circumstances other than as described in 27.5, the physician assistant must submit a new practice agreement with a participating physician and may not practice after the participating physician becomes unavailable until the new practice agreement has been submitted to the Board.
- 27.7 Practice Agreements When a Physician Assistant Has Multiple Practice Sites. While separate practice agreements are not required for each practice setting of a PA who has multiple practice settings, in some cases it may not be possible for a single practice agreement to cover each of a PA's practice settings, such as when a PA works for two different employers, or when a participating physician within one employing organization is not willing to act as the participating physician for an additional practice site with the same employer. Although a single practice agreement may apply to more than one practice setting, in instances where a practice agreement does not work for one or more of a PA's additional practice sites there must be a practice agreement in place that applies to each practice setting.

## **28.0 Physician Assistant Professional Standards; Disciplinary Procedures**

### **28.1 Prescribing Controlled Substances for Participating Physician**

It is unprofessional conduct for a physician assistant to prescribe or dispense controlled substances listed in D.E.A. Schedules II, III, or IV for a physician who is the PA's participating physician.

### **28.2 Prescribing for or Treating Participating Physician**

It is discouraged for a PA to prescribe or dispense non-controlled prescription substances for the PA's participating physician. PAs who treat their participating physician are required to meet all standards of appropriate care, including proper establishment of a professional relationship with the patient and maintenance of appropriate patient records.

### **28.3 Practice Without a Practice Agreement in Place**

It is unprofessional conduct for a physician assistant to practice without having a valid practice agreement that applies to the practice setting and the care provided, unless one of the two exceptions stated in 26 V.S.A. § 1734c(b) and 26 V.S.A. § 1735a(e) applies. The practice agreement must be on file with the Board. Licensees should verify that practice agreements were received by the Board by checking the Board's online system.

## **28.4 Continuing Education**

28.4.1 As evidence of continued competence in the knowledge and skills of a physician assistant, all physician assistants shall complete a continuing medical education program of 100 approved credit hours every two years. A minimum of 50 credit hours shall be from Category 1. Proof of completion shall be submitted to the Board with the application for renewal of certification.

28.4.2 Certification or recertification by the NCCPA at any time during a 2-year licensure period may be accepted in lieu of 100 hours continuing medical education credits for that 2-year period. PAs must also comply with any applicable continuing medical education requirements established by Vermont law or Board Rule.

### **28.4.3 Required CME for PAs With D.E.A. Number**

All licensees who prescribe controlled substances shall certify at the time of each renewal that they have completed at least two hours of CME activity on controlled substances prescribing. The activity must be accredited as AMA PRA Category 1 Credit™ training, American Academy of Physician Assistants Category 1 training, or be specifically designated as qualifying by the Board. The following topics must be covered, as required by Vermont law: abuse and diversion, safe use, and appropriate storage and disposal of controlled substances; the appropriate use of the Vermont Prescription Monitoring System; risk assessment for abuse or addiction; pharmacological and nonpharmacological alternatives to opioids for managing pain; medication tapering and cessation of the use of controlled substances; and relevant State and federal laws and regulations concerning the prescription of opioid controlled substances. Each licensee who is registered with the D.E.A. and who holds a D.E.A. number to prescribe controlled substances, or who has submitted a pending application for one, is presumed to prescribe controlled substances and must meet this requirement. Any physician assistant who is required to certify completion of this CME to renew, but who cannot, will be subject to the provisions regarding makeup of missing CME in subsections 23.3 and 23.4.

## **28.5 Grounds for Disciplinary Action**

28.5.1 Grounds for disciplinary action include the conduct set forth in 26 V.S.A. § 1736. Under 26 V.S.A. § 1734(e), failure to maintain competence in the knowledge and skills of a physician assistant may result in revocation of

license, following notice of the deficiency and an opportunity for a hearing.

#### **28.6 Disciplinary Action**

28.6.1 All complaints and allegations of unprofessional conduct shall be processed in accordance with Section V of this rule.

28.6.2 After notice and an opportunity for hearing, the Board may take disciplinary action against any applicant or physician assistant found guilty of unprofessional conduct, as provided by 3 V.S.A. § 809, and 26 V.S.A. §§ 1361(b) and 1737, including but not limited to:

28.6.2.1 Reprimand, suspend, revoke, limit, condition, deny or prevent renewal of license;

28.6.2.2 Required completion of continuing education;

28.6.2.3 Required supervised training or practice for a specified period of time or until a satisfactory evaluation by the supervising physician has been submitted to the Board.

#### **28.7 Right to Appeal**

28.7.1 A party aggrieved by a final decision of the Board may, within 30 days of the decision, appeal that decision by filing a notice of appeal with the Executive Director of the Vermont Board of Medical Practice, as provided by 26 V.S.A. § 1367 and 3 V.S.A. § 815.

### **SECTION IV. PODIATRISTS**

#### **29.0 License Required**

No person shall practice or attempt to practice podiatry or hold himself or herself out as being able to do so in this state without possessing a valid, current license issued by the Board. In addition, no person shall use in connection with the person's name letters, words, or insignia indicating or implying that the individual is a podiatrist unless licensed by the Board.

#### **30.0 General Requirements for Licensing**

30.1 In order to be granted a license to practice podiatry an applicant must meet the following eligibility requirements:

30.1.1 Be at least 18 years of age;

30.1.2 Be competent in speaking, writing and reading the English language;

- 30.1.3 Hold a diploma or certificate of graduation from a school of podiatric medicine accredited by the CPME and approved by the Board;
  - 30.1.4 Have satisfactorily completed one year's postgraduate training in a United States hospital program or preceptor-ship which is approved by the Board and which meets the minimum requirements set by the CPME;
  - 30.1.5 Have successfully completed the following examinations given by the National Board of Podiatry Examiners: Part I and Part II of the National Board of Podiatric Medical Examiners examination followed in sequence by the PMLexis examination; and
  - 30.1.6 Meet the requirements for moral character and professional competence.
- 30.2** For each applicant for licensure as a podiatrist the Board must receive, in a form satisfactory to the Board:
- 30.2.1 Proof of identity and that the applicant is at least 18 years of age as evidenced by a certified birth certificate or a copy of a naturalization certificate;
  - 30.2.2 For each podiatric medical school attended, the Board of Medical Practice Podiatric Medical Education Form;
  - 30.2.3 For each postgraduate training program attended, the Board of Medical Practice Verification of Postgraduate Podiatric Training Form for primary source documentation of all postgraduate training;
  - 30.2.4 Verification of podiatric medical licensing examination results; sent directly to the Board by the National Board of Podiatric Medical Examiners;
  - 30.2.5 Verification of all podiatric medical licenses ever held in any state, territory, or province at any level, including permanent, temporary, and training licenses;
  - 30.2.6 The Uniform Application Affidavit and Authorization for Release of Information Form.
  - 30.2.7 Federation of Podiatric Medical Boards Disciplinary Inquiry Report. This must be a current report issued within 60 days of submission of application.
  - 30.2.8 National Practitioner Data Bank Self-Query Report. This must be a current Self-Query Report issued within 60 days of submission of the application. Information about obtaining a Self-Query Report is in the instructions to the application.
  - 30.2.9 The applicant's CV (curriculum vitae) or résumé.
  - 30.2.10 Board of Medical Practice Reference Forms completed and submitted directly by the chief of service (or equivalent) and two other active physician or podiatrist staff members of the hospital where the applicant currently holds, or most recently held, privileges. At least one reference

must be from a podiatrist. If an applicant has not held privileges at a hospital within two years of the date of submission of the application, or cannot provide references as indicated, the Board in its discretion may accept references from other podiatrists or physicians who have knowledge of the applicant's moral character and professional competence. An applicant shall indicate in the application if asking the Board to accept references that do not meet the above-stated standard.

- 30.3** All applicants must submit a completed Board application package, provide required documentation as specified in the application form or requested by the Board, and pay the application fee. Documents submitted with the application become part of the official record and will not be returned.
- 30.4** At the discretion of the licensing committee or the Board any applicant may be required to be interviewed by a Board member.

### **31.0 Licensure Without Examination**

- 31.1** To qualify for licensure without examination, an applicant must present evidence satisfactory to the Board that the applicant:
  - 31.1.1 Holds a current and unrestricted podiatrist license in another jurisdiction;
  - 31.1.2 Has met licensing requirements in the other jurisdiction that are substantially equal to the Board's requirements for podiatric licensure;
  - 31.1.3 Has presented current reference letters as to moral character and professional competence; and
  - 31.1.4 Is professionally qualified; the Board may, in its discretion, require an applicant to take and pass the PMLexis examination prior to licensure.
- 31.2** At the discretion of the licensing committee, any applicant may be required to be interviewed by a Board member.

### **32.0 Satisfaction of Licensing Requirements by Practice in Another United States Jurisdiction**

- 32.1** A podiatrist can meet the licensing requirements stated in 30.1.2 and 30.1.5 by demonstrating that:
  - 32.1.1 They have been practicing podiatry full-time in another United States jurisdiction while continuously holding a full, unrestricted, and unlimited license in good standing for at least three years preceding the day on which the Vermont license is to be granted; and
  - 32.1.2 They meet the education and training requirements stated in 26 V.S.A. § 372(b)(1).

**32.2** For each applicant for licensure as a podiatrist under 26 V.S.A. § 372(a) the Board must receive, in a form satisfactory to the Board:

- 32.2.1 A complete online application;
- 32.2.2 Proof of identity and that the applicant is at least 18 years of age as evidenced by a certified birth certificate or a copy of a naturalization certificate;
- 32.2.3 For each podiatric medical school attended, the Board of Medical Practice Podiatric Medical Education Form showing graduation from a school of podiatric medicine accredited by the CPME and approved by the Board;
- 32.2.4 For each postgraduate training program attended, the Board of Medical Practice Verification of Postgraduate Podiatric Training Form for primary source documentation of all postgraduate training.
- 32.2.5 Verification of the podiatry license that the applicant relies upon to qualify to apply under the endorsement procedure;
- 32.2.6 Board of Medical Practice Reference Forms completed and submitted directly by the chief of service (or equivalent) and two other active physician or podiatrist staff members of the hospital where the applicant currently holds, or most recently held, privileges. At least one reference must be from a podiatrist. If an applicant has not held privileges at a hospital within two years of the date of submission of the application, or cannot provide references as indicated, the Board in its discretion may accept references from other podiatrists or physicians who have knowledge of the applicant's moral character and professional competence. An applicant shall indicate in the application if asking the Board to accept references that do not meet the above-stated standard.;
- 32.2.7 The Uniform Application Affidavit and Authorization for Release of Information Form;
- 32.2.8 A Federation of Podiatric Medical Boards Disciplinary Inquiry Report. This must be a current report issued within 60 days of submission of application.
- 32.2.9 National Practitioner Data Bank Self-Query Report. This must be a current Self-Query Report issued within 60 days of submission of the application. Information about obtaining a Self-Query Report is in the instructions to the application;
- 32.2.10 The applicant's CV (curriculum vitae) or résumé; and

**32.3** All applicants must submit a completed Board endorsement application package, provide required documentation as specified in the application form or requested by the Board, and pay the application fee. Documents submitted with the application become part of the official record and will not be returned.

- 32.4** At the discretion of the licensing committee or the Board any applicant may be required to be interviewed by a Board member.

### **33.0 Limited Temporary License**

**33.1** A limited temporary license may be issued for the purpose of completing postgraduate training and allows the licensee to practice under the supervision and control of a Vermont-licensed podiatrist in a CPME-accredited training program. The applicant must be enrolled in a CPME-accredited program of postgraduate training or in sub-specialty clinical fellowship training in an institution that has an accredited program in the parent specialty. A limited temporary license may be renewed or reissued, upon submission of a completed renewal application, including fee and required documentation.

**33.2** Application for a limited temporary license shall include:

33.2.1 Completed online application;

33.2.2 The required fee;

33.2.3 A copy of the applicant's podiatric medical school diploma;

33.2.4 A supervising podiatrist's / program director's statement acknowledging statutory responsibility for the applicant's negligent or wrongful acts or omissions;

33.2.5 Direct verification of medical education;

33.2.6 ECFMG if applicable;

33.2.7 Verification of other state licensure;

33.2.8 NPDB self-query; and

33.2.9 Any additional forms or documentation required by the Board.

### **34.0 Podiatrists' Professional Standards**

**34.1 Continuing Medical Education. Required CME:** Prescribing Controlled Substances. All podiatry licensees who prescribe controlled substances shall certify at the time of each renewal that they have completed at least two hours of CME activity on controlled substances prescribing. The activity must be accredited as AMA PRA Category 1 Credit™ training or Council on Podiatric Medical Education approved training, or be specifically designated as qualifying by the Board. The following topics must be covered, as required by Vermont law: abuse and diversion, safe use, and appropriate storage and disposal of controlled substances; the appropriate use of the Vermont Prescription Monitoring System; risk assessment for abuse or addiction; pharmacological and nonpharmacological alternatives to opioids for managing pain; medication tapering and cessation of the use of controlled substances; and relevant State and federal laws and regulations concerning the prescription of opioid controlled



substances. Each licensee who is registered with the D.E.A. and who holds a D.E.A. number to prescribe controlled substances, or who has submitted a pending application for one, is presumed to prescribe controlled substances and must meet this requirement. Any podiatrist who is required to certify completion of this CME to renew, but who cannot, will be subject to the provisions regarding makeup of missing CME in 23.3 and 23.4.

#### **34.2 Grounds for Disciplinary Action**

Grounds for disciplinary action are set out in 3 V.S.A. § 129a, 18 V.S.A. § 1852, and 26 V.S.A. § 375.

#### **34.3 Disciplinary Action**

34.3.1 All complaints and allegations of unprofessional conduct shall be processed in accordance with this rule.

34.3.2 After notice and opportunity for hearing and upon a finding of unprofessional conduct, the Board may take disciplinary action against a licensed podiatrist, applicant, or person who later becomes an applicant as provided in 26 V.S.A. § 376 and 26 V.S.A. § 1361(b). Disciplinary action may include:

34.3.2.1 Refusal to issue or renew a license;

34.3.2.2 Suspension, revocation, limitation, or conditioning of a license;

34.3.2.3 Issuance of a warning or reprimand; and/or

34.3.2.4 Issuance of an administrative penalty.

34.3.3 The Board may approve a negotiated agreement between the parties. The conditions or restrictions that may be included, without limitation, in such an agreement are set forth in 26 V.S.A. § 376(d).

#### **34.4 Right to Appeal**

A party aggrieved by a final decision of the Board may, within 30 days of the decision appeal to the Vermont Supreme Court, by filing a notice of appeal with the Executive Director as provided by 26 V.S.A. § 375(d).

### **SECTION V. PROCEDURE FOR COMPLAINTS MADE AGAINST PHYSICIANS, PODIATRISTS, PHYSICIAN ASSISTANTS, ANESTHESIOLOGIST ASSISTANTS, AND RADIOLOGIST ASSISTANTS**

#### **35.0 Initiating a Complaint**

##### **35.1 Form of Complaint; Filing**

35.1.1 Any party wishing to make a complaint of unprofessional conduct against a professional regulated by the Board may file a written complaint with the Board. Written complaints must include identifying and contact

information for the complainant. The Board provides a printed complaint form for this purpose. Use of a form is preferred, but not required. If applicable, a complainant must provide authorization for the release of relevant medical records using the Board's form.

35.1.2 The Board may open an investigation on its own initiative to evaluate instances of possible unprofessional conduct that may come to its attention. 26 V.S.A. § 1355(a); 3 V.S.A. § 129(b).

## **36.0 Notice**

### **36.1 Notice to Complainant**

The Board will send the complainant a standard letter of acknowledgment stating that the complaint has been received by the Board and that it will be investigated.

### **36.2 Notice to Respondent**

36.2.1 The Board will send the Respondent a copy of the complaint, a copy of a release of medical records signed by the patient or other authorized person, a copy of the statutory definition of unprofessional conduct, and a standard letter stating that:

36.2.1.1 This complaint has been lodged against him or her;

36.2.1.2 The letter is not a notice of a formal hearing; and

36.2.1.3 The respondent must respond in writing. The response should be addressed to the Investigating Committee at the address of the Board and filed with the Board within 20 days of the date of the letter.

36.2.2 The Respondent is responsible for the accuracy of the response and must sign the response, even if also signed by an attorney.

36.2.3 The Executive Director or Investigator may grant one extension of up to 20 additional days, or more for reasonable cause, to provide the response. A request for further delay must be submitted to the assigned investigative committee.

36.2.4 In cases where the Board has initiated an investigation, the Board will send the Respondent a letter providing notice of the investigation and describing the matters for which response is requested.

36.2.5 Unlicensed Practice. No notice need be provided to the target of an investigation into unlicensed practice.

## **37.0 Investigative**

### **37.1 Investigative Committee**

A standing investigative committee or one specially appointed, and an Assistant Attorney General, will investigate each complaint and recommend disposition to the Board. The investigative committee shall be assisted by an investigator from the Board. After the file is received, the investigating committee will discuss the complaint and plan the investigation.

### **37.2 Cooperation with Investigation; Impeding an Investigation**

37.2.1 Professionals are obligated to cooperate with the Board throughout an investigation. A Respondent may contest a subpoena using the appropriate mechanisms, but in the absence of a delay associated with a bona fide objection to subpoena a failure to respond to a subpoena within a reasonable time constitutes a violation of this rule.

37.2.2 Professionals are prohibited from engaging in any action that may deter a witness from cooperating with a Board investigation and from retaliating against any person based upon the filing of a complaint or cooperation in any way with a Board investigation. Professionals are prohibited from concealing, altering or destroying any evidence that is or may be pertinent to a Board investigation.

37.3 Confidentiality of investigations is governed by 26 V.S.A. § 1318.

### **38.0 Suspension Prior to Completion of an Investigation**

38.1 **Summary Suspension:** the investigative committee may find that certain alleged misconduct poses so grave a threat to the public health, safety, or welfare that emergency action must be taken. In such a case, the committee will request a special meeting of the hearing panel, and recommend that the Board order summary suspension of the Respondent's license or certification, pending a hearing under the authority of 3 V.S.A. § 814(c). If the Board orders summary suspension, a hearing will be scheduled as soon as practical, and the Assistant Attorney General will present the case against the suspended professional.

38.2 **Interim Suspension:** grounds for entry of such an order are as follow:

38.2.1 **Criminal Convictions:** the investigative committee shall consider any criminal conviction for which a licensee may be disciplined under 26 V.S.A. § 1354(3) as an unprofessional conduct complaint and may request that the Board immediately suspend the Respondent's license or certification under the authority of 26 V.S.A. § 1365. Upon receipt of the certified copy of the judgment of conviction, the Board may order an interim suspension pending a disciplinary hearing before the Board.

38.2.1.1 The disciplinary hearing shall not be held until the judgment of conviction has become final, unless Respondent requests that the disciplinary hearing be held without delay. The sole issue to be determined at the hearing shall be the nature of the disciplinary action to be taken by the Board.

38.2.1.2 The Respondent, within 90 days of the effective date of the order of interim suspension, may request a hearing concerning the interim suspension at which Respondent shall have the burden of demonstrating why the interim suspension should not remain in effect. The interim suspension shall automatically terminate if Respondent demonstrates that the judgment of conviction has been reversed or otherwise vacated.

38.2.2 **Out-of-State Discipline:** the committee shall consider certain out-of-state disciplinary action as set forth in 26 V.S.A. § 1366 as an unprofessional conduct complaint and may request that the Board immediately suspend the Respondent's license or certification under authority of that statute.

38.2.2.1 Upon receipt of the certified copy of the order or statement regarding the relevant out-of-state disciplinary action, the Board may order an interim suspension pending a disciplinary hearing before the Board.

38.2.2.2 The Respondent, within 90 days of the effective date of the order of interim suspension, may request a hearing concerning the interim suspension at which Respondent shall have the burden of demonstrating why the interim suspension should not remain in effect. The interim suspension shall automatically terminate if Respondent demonstrates that the out-of-state disciplinary action has been reversed or vacated.

### 39.0 Disposition by the Investigative Committee

39.1 Once the investigative committee determines that the investigation is complete, it shall pursue one of three possible dispositions:

39.1.1 **Concluding the Investigation:** If, after investigating the complaint, the committee and the assistant attorney general determine that the facts established by the investigation do not present cause for pursuing charges of unprofessional conduct, then the committee may recommend that the Board conclude the investigation. If approved by the Board, the case is closed without further action. A concluded investigation may be reopened if new evidence is received, a new and related complaint is made, or upon request for reconsideration.

39.1.2 **Settlement:** If, after investigating the complaint, the committee and the Office of the Attorney General determine that the facts established by the investigation present cause for pursuing charges of unprofessional conduct, the committee shall explore the possibility of stipulated settlements and consent orders, as established in a Stipulation.

39.1.2.1 Recommended Stipulations should include a concession of wrongdoing by the Respondent, terms and conditions, an understanding that this concession may be relied on by the

Board in case the licensee is later found to have engaged in unprofessional conduct, and an understanding that this final disposition of the complaint is public and that the Board shall notify the Federation of State Medical Boards Board Action Data Bank, and the National Practitioner Data Bank, and may notify other states of its contents.

39.1.2.2 When a Stipulation is filed with the Board, the complainant shall be provided with a copy of the stipulation and notice of any stipulation review scheduled before the Board. The complainant shall have the right to be heard at any stipulation review.

39.1.2.3 The Stipulation is finalized only upon acceptance by the full Board. If the investigative committee recommends a disposition in the form of a Stipulation, the Board may vote to ask the committee to change the terms of the Stipulation. If a Stipulation is not accepted by the Board within a reasonable time, the investigative committee may pursue specification of charges.

39.1.3 **Specification of Charges:** If after investigation the investigative committee and the Assistant Attorney General determine that the facts established provide a basis to allege unprofessional conduct as defined by 26 V.S.A. § 1354 and the committee believes a settlement cannot be reached or is not warranted on the facts, a Specification of Charges shall be signed by the Executive Director.

#### **40.0 Disciplinary Proceedings**

40.1 The Executive Director may designate a hearing panel composed of at least one physician member of the Board and at least one public member. Members may be appointed as provided by 26 V.S.A. § 1372. The role of the hearing panel is to hear evidence, make findings of fact, and make recommendations to the Board for a decision on the charges.

#### **40.2 Specification of Charges; Notice; Failure to Appear; Default.**

40.2.1 The Board commences disciplinary proceedings by serving a Specification of Charges and a notice of hearing upon the Respondent. The hearing is scheduled no sooner than 30 days after service. Notice shall tell the Respondent that a response may be filed within 20 days of service.

40.2.2 Notice shall be sent to the Respondent or other person or entity entitled to notice by certified mail, return receipt requested, with restricted delivery to addressee only. If service cannot be accomplished by certified mail, the Board will make reasonable attempt to accomplish service by regular mail or by personal service within the state, if feasible. A continuance may be granted upon request for good cause as determined by the Board, hearing

committee, or a presiding officer. Copies of the notice shall be sent to the complainant, the Assistant Attorney General, and the Respondent's attorney.

40.2.3 If the Respondent, after proper notice, does not respond to the Specification of Charges or appear at a hearing the Board may take disciplinary action after receiving the report of a hearing panel or after hearing the evidence if a hearing panel is not used. If a Respondent who did not participate in a panel hearing attends the hearing before the Board, they may present arguments to the Board, but may not present additional evidence unless the Board grants the Respondent leave to submit additional evidence. In such circumstances, the right of the Respondent to submit evidence is subject to any limitations set by the Board or hearing officer regarding the scope of evidence that may be presented.

40.2.4 A Respondent who has defaulted may submit a written motion within 10 days of the default to request a new hearing. The Board may grant a new hearing only upon a showing of good cause for not appearing at the hearing and for not requesting a continuation of the hearing. The Board shall issue a written decision making a determination on whether to grant a new hearing.

#### **40.3 Discovery**

After a specification of charges has been filed, the Board, or a hearing officer on its behalf, shall have authority to conduct a prehearing conference or discovery conference and to issue orders regulating discovery and depositions, scheduling, motions by the parties, and such other matters as may be necessary to ensure orderly preparation for hearing.

#### **40.4 Hearing**

Hearings before a hearing panel and before the Board will be conducted according to the hearing provisions of 26 V.S.A. ch. 23 and the contested case provisions of the Administrative Procedure Act, 3 V.S.A. § 809-815. If a hearing panel is used, the parties will be allowed to present evidence to the Board only if the Board allows it. A Board hearing officer may act as presiding officer at hearings and pre- and post-hearing conferences for the purpose of making procedural and evidentiary rulings. A presiding officer may administer oaths and affirmations, rule on offers of proof and receive relevant evidence, regulate the course of the hearing, convene and conduct prehearing conferences, dispose of procedural requests and similar matters, and take any other action authorized by the Administrative Procedure Act.

#### **40.5 Decision, Order, and Entry; Notice of Decision; Transcripts**

The hearing officer will prepare the written decision and order in accordance with the Board's instructions, within a reasonable time of the closing of the record in the case. The decision and order will be entered upon being signed by the chair or vice-chair of the Board. A decision and order is effective upon entry. Notice of

the decision and order will be sent to the Respondent by certified mail. Notice of the decision and order will be sent to the Respondent's attorney, the complainant, and the prosecuting attorney by regular mail or email. A transcript of the proceeding is available at cost.

#### **41.0 Compliance Investigation, License or Certification Reinstatement or Removal of Conditions After Disciplinary Action**

##### **41.1 Assignment of Compliance Investigation**

Upon entry of an order taking disciplinary action against a Respondent, a compliance investigation file will be opened. The file will be assigned to the investigative committee that was responsible for the initial investigation of unprofessional conduct. If the matter was investigated by a committee of ad hoc members, the file will be assigned to one of the standing investigative committees. The committee shall make recommendations for action to the full Board regarding compliance, requests for reinstatement, or modification or removal of conditions established by the order.

##### **41.2 License or Certification Reinstatement or Removal of Conditions**

A person licensed or certified by the Board who has been disciplined may petition at a later date for license or certification reinstatement or modification or removal of conditions from the license or certification. In addition to complying with any restrictions or conditions on reinstatement imposed by the Board in its disciplinary order, an applicant applying for reinstatement may be asked to complete a reinstatement application. An investigative committee will review such information and make a recommendation to the full Board. The Board may hold a hearing to determine whether reinstatement should be granted.

##### **41.3 Appeals**

A party aggrieved by a final decision of the Board may, within 30 days of the decision, appeal that decision to the Vermont Supreme Court.

### **SECTION VI. RULES FOR ANESTHESIOLOGIST ASSISTANTS**

#### **42.0 Training and Qualification**

**42.1** The eligibility requirements for certification as an anesthesiologist assistant are listed in 26 V.S.A. § 1654 and supplemented by this rule. The requirements for temporary certification are outlined in 26 V.S.A. § 1655 and supplemented by this rule.

**42.2** Prior to being certified as an anesthesiologist assistant by the Board of Medical Practice, a person must be qualified by education, training, experience, and personal character to provide medical services under the direction and supervision

of an anesthesiologist. The applicant must submit to the Board all information that the Board requests to evaluate the applicant's qualifications.

#### **43.0 Initial Certification**

**43.1** For each applicant for initial certification as an anesthesiologist assistant the Board must receive, in a form satisfactory to the Board:

- 43.1.1 A complete online application;
- 43.1.2 Proof of identity and that the applicant is at least 18 years of age as evidenced by a certified birth certificate or a copy of a naturalization certificate;
- 43.1.3 Verification of certification or licensure in all other states, territories, or provinces where the applicant is currently or ever was certified or licensed to provide medical services, including permanent, temporary, and training licenses or certifications;
- 43.1.4 Two Board of Medical Practice reference forms including one from a recent supervising anesthesiologist and one from another prior supervising anesthesiologist;
  - 43.1.4.1 Applicants with fewer than six months of substantially full-time (at least 30 hours per week) practice must provide a reference form from the director of the applicant's training program and another reference form from an anesthesiologist who has supervised the applicant in practice or in training;
- 43.1.5 The Board of Medical Practice's Certificate of Anesthesiologist Assistant Education form for primary source documentation of completion of a Board-approved anesthesiologist assistant program sponsored by an institution of higher education, completed and submitted by the institution;
- 43.1.6 Primary source documentation of current certification sent directly to the Board by the National Commission for the Certification of Anesthesiologist Assistants (NCCAA);
- 43.1.7 Completed Proposed Primary Supervising Anesthesiologist form signed by the applicant and supervising anesthesiologist;
- 43.1.8 Completed Proposed Secondary Supervising Anesthesiologist form signed by the secondary supervising anesthesiologist;
- 43.1.9 A protocol signed by the proposed supervising anesthesiologist;
- 43.1.10 A copy of the anesthesiologist assistant's employment contract;
- 43.1.11 The Board of Medical Practice Anesthesiologist Assistant Employment Contract form;



- 43.1.12 The Uniform Application Affidavit and Authorization for Release of Information Form;
  - 43.1.13 The applicant's CV (curriculum vitae) or résumé; and
  - 43.1.14 National Practitioner Data Bank Self-Query Report. This must be a current Self-Query Report issued within 60 days of submission of the application. Information about obtaining a Self-Query Report is in the instructions to the application.
- 43.2** All applicants must submit a completed Board application package, provide required documentation as specified in the application form or requested by the Board, and pay the application fee. Documents submitted with the application become part of the official record and will not be returned.
- 43.3** At the discretion of the licensing committee or the Board, any applicant may be required to be interviewed by a Board member.

#### **44.0 Temporary Certification**

- 44.1** The Board may issue a temporary certification to an applicant who meets the educational requirements under 26 V.S.A. § 1654(1) if:
- 44.1.1 The NCCAA certification examination has not been offered since the applicant became eligible to take it; or
  - 44.1.2 The applicant has taken the NCCAA certification examination one time but has not yet received the results of the examination.
- 44.2** The holder of a temporary certification shall take and successfully pass the first available NCCAA examination. If the holder of a temporary certification does not take the examination, that temporary certification shall expire on the date of that examination. However, if the holder of a temporary certification can show that there was exceptional cause that prevented the individual from taking the examination, the Board may, in its discretion, and for good cause shown, renew the temporary certification until the date of the next available NCCAA examination.
- 44.3** If the holder of a temporary certification takes the first available NCCAA examination but does not successfully pass it, the temporary certification shall expire on the day after receiving notice of the failure to pass the examination. In that case, the Board shall not renew the temporary certification. The applicant may re-apply for certification only after having taken and passed the examination.

#### **45.0 Renewal of Certification**

- 45.1** Certification shall be renewable every two years on completion of the online renewal form, payment of the required fee and submission of: current contract; updated copies of primary and secondary supervision forms; updated protocol; and, verification of current, active NCCAA certification.

**45.2** Lapsed licenses may be renewed under the provisions of 26 V.S.A. § 1656.

#### **46.0 Change of Certification**

**46.1** The Board shall be notified and the appropriate applications and documentation filed whenever:

46.1.1 The anesthesiologist assistant's protocol changes;

46.1.2 The anesthesiologist assistant will be working at a different or an additional accredited facility; or

46.1.3 The anesthesiologist assistant will be supervised by a new or an additional anesthesiologist.

**46.2** Documents already on file with the Board may be referred to and need not be resubmitted.

#### **47.0 More Than One Supervising Anesthesiologist**

**47.1** In any application for initial certification, temporary certification, renewal of certification or change of certification, if there is more than one anesthesiologist at an accredited facility who will supervise an anesthesiologist assistant, then, in addition to the information required to be submitted by this rule, a document signed by all anesthesiologists who will be supervising the anesthesiologist assistant shall be filed with the Board with the application.

**47.2** Additional supervising anesthesiologists may be added subsequent to the application, provided the supervising anesthesiologist files a signed document with the Board. In the document, the anesthesiologists shall affirm that each assumes responsibility for all professional activities of the anesthesiologist assistant while the anesthesiologist is supervising the anesthesiologist assistant.

#### **48.0 Termination of Certification**

If the supervisory relationship between the anesthesiologist and the anesthesiologist assistant is terminated for any reason, each party must notify the Board directly and immediately in writing. The notice shall include the reasons for the termination. The anesthesiologist assistant shall cease practice until a new application is submitted by the supervising anesthesiologist and is approved by the Board.

#### **49.0 Practice**

**49.1** An anesthesiologist assistant shall perform only those tasks assigned on a case-by-case basis by the supervising anesthesiologist. The anesthesiologist assistant shall implement the personalized plan for each patient as individually prescribed by the supervising anesthesiologist after that physician has completed a specific

assessment of each patient. In determining which anesthetic procedures to assign to an anesthesiologist assistant, a supervising anesthesiologist shall consider all of the following:

- 49.1.1 The education, training and experience of the anesthesiologist assistant;
- 49.1.2 The anesthesiologist assistant's scope of practice as defined in 26 V.S.A. Chapter 29 and this rule;
- 49.1.3 The conditions on the practice of the anesthesiologist assistant set out in the written practice protocol;
- 49.1.4 The physical status of the patient according to the physical status classification system of the American Society of Anesthesiologists, as in effect at the time the assignment of procedures is made. The classification system is available from the American Society of Anesthesiologists and shall be posted on the Board's website;
- 49.1.5 The invasiveness of the anesthetic procedure;
- 49.1.6 The level of risk of the anesthetic procedure;
- 49.1.7 The incidence of complications of the anesthetic procedure;
- 49.1.8 The physical proximity of the supervising anesthesiologist and the anesthesiologist assistant or assistants the anesthesiologist may be supervising concurrently; and
- 49.1.9 The number of patients whose care is being supervised concurrently by the supervising anesthesiologist.

**49.2** The supervising anesthesiologist retains responsibility for the anesthetic management in which the anesthesiologist assistant has participated.

## **50.0 Supervision**

- 50.1** A supervising anesthesiologist shall supervise an anesthesiologist assistant within the terms, conditions, and limitations set forth in a written practice protocol. Anesthesiologist supervision requires, at all times, a direct, continuing and close supervisory relationship between an anesthesiologist assistant and the supervising anesthesiologist.
- 50.2** Supervision does not require the constant physical presence of the supervising anesthesiologist; however, the anesthesiologist must remain readily available in the facility for immediate diagnosis and treatment of emergencies.
- 50.3** The supervising anesthesiologist shall be readily available for personal supervision and shall be responsible for pre-operative, intra-operative and post-operative care.
- 50.4** The supervising anesthesiologist shall personally participate in the most demanding procedures in the anesthesia plan, which shall include induction and emergence.

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Effective Date: x/x/2022

- 50.5** The supervising anesthesiologist shall insure that, with respect to each patient, all activities, functions, services and treatment measures are immediately and properly documented in written form by the anesthesiologist assistant. All written entries shall be reviewed, countersigned, and dated by the supervising anesthesiologist. The supervising anesthesiologist's signature on the anesthetic record will fulfill this requirement for all written entries on the anesthetic record.
- 50.6** Nothing in this section shall prohibit the supervising anesthesiologist from addressing an emergency in another location in the facility.

### **51.0 Protocol and Scope of Practice**

- 51.1** At no time shall the scope of practice for the anesthesiologist assistant include procedures or treatments that the supervising anesthesiologist does not perform within that practice.
- 51.2** The anesthesiologist assistant may assist the anesthesiologist in developing and implementing an anesthesia care plan for a patient. In so doing, the anesthesiologist assistant may, in the discretion of the anesthesiologist, do any of the following:
- 51.2.1 Obtain a comprehensive patient history and present that history to the anesthesiologist who must conduct a pre-anesthesia interview and evaluation sufficient to confirm the anesthesiologist assistant's evaluation;
  - 51.2.2 Pretest and calibrate anesthesia delivery systems;
  - 51.2.3 Monitor, obtain and interpret information from the anesthesia delivery systems and anesthesia monitoring equipment;
  - 51.2.4 Place medically accepted monitoring equipment;
  - 51.2.5 Establish basic and advanced airway interventions, including intubations of the trachea and ventilatory support;
  - 51.2.6 Administer vasoactive drugs and start and adjust vasoactive infusions;
  - 51.2.7 Administer anesthetic drugs, adjuvant drugs and accessory drugs;
  - 51.2.8 Administer regional anesthetics;
  - 51.2.9 Administer blood, blood products and supportive fluids;
  - 51.2.10 Participate in administrative activities and clinical teaching activities;
  - 51.2.11 Provide assistance to cardiopulmonary resuscitation teams in response to life-threatening situations;
  - 51.2.12 Prescribe peri-operative medications to be used in the accredited facility; and
  - 51.2.13 Participate in research activities by performing the same procedures listed above.

51.2.14 Any other activity that the Board approves in a protocol to allow for changing technology or practices in anesthesiology.

## **52.0 Prescriptive Authority**

An anesthesiologist assistant shall not have authority to write prescriptions for medications that will be filled outside of the facility in which the anesthesiologist assistant works.

## **53.0 Places of Practice**

An anesthesiologist assistant shall work only in a licensed hospital facility with the supervision of an anesthesiologist.

## **54.0 Patient Notification and Consent**

Any physician, clinic, or hospital that uses the services of an anesthesiologist assistant must:

- 54.1** Post a clear notice to that effect in a conspicuous place;
- 54.2** Except in case of an emergency, provide the patient a consent form that includes that the anesthesiologist may use an anesthesiologist assistant; and
- 54.3** Require each anesthesiologist assistant to wear a name tag clearly indicating the title anesthesiologist assistant, per 26 V.S.A. § 1652.

## **55.0 Disciplinary Action**

- 55.1** All complaints and allegations of unprofessional conduct shall be processed in accordance with Section IV of this rule.
- 55.2** After notice and an opportunity for hearing, the Board may take disciplinary action against any applicant, anesthesiologist assistant trainee, or anesthesiologist assistant found guilty of unprofessional conduct, as provided by 3 V.S.A. §§ 129 and 809, and 26 V.S.A. § 1658, including but not limited to:
  - 55.2.1** Reprimand, suspend, revoke, limit, condition, deny or prevent renewal of certification;
  - 55.2.2** Required completion of continuing education;
  - 55.2.3** Required supervised training or practice for a specified period of time or until a satisfactory evaluation by the supervising physician has been submitted to the Board.

- 55.3** The Board may approve a negotiated agreement between the parties. The conditions or restrictions that may be included, without limitation, in addition to those above, in such an agreement are set forth in 3 V.S.A. § 809(d) and 26 V.S.A. § 1659(d).

**56.0 Right to Appeal**

A party aggrieved by a final decision of the Board may, within 30 days of the decision, appeal that decision by filing a notice of appeal with the Executive Director of the Vermont Board of Medical Practice, as provided by 26 V.S.A. § 1367 and 3 V.S.A. § 815.

**SECTION VII. RULE FOR RADIOLOGIST ASSISTANTS**

**57.0 Training and Qualification**

- 57.1** The eligibility requirements for certification as a radiologist assistant are listed in 26 V.S.A. § 2854 and supplemented by this rule. The requirements for temporary certification are outlined in 26 V.S.A. § 2855 and supplemented by this rule.
- 57.2** Prior to being certified as a radiologist assistant by the Board of Medical Practice, a person must be qualified by education, training, experience, and personal character to provide medical services under the direction and supervision of a radiologist. The applicant must submit to the Board all information that the Board requests to evaluate the applicant's qualifications.

**58.0 Initial Certification**

- 58.1** An applicant for initial certification as a radiologist assistant shall submit to the Board:
- 58.1.1** A complete online application;
  - 58.1.2** Proof of identity and that the applicant is at least 18 years of age as evidenced by a certified birth certificate or a copy of a naturalization certificate;
  - 58.1.3** Verification of current licensure as a radiologic technologist in radiography in Vermont under Chapter 51 of Title 26 V.S.A.;
  - 58.1.4** Verification of certification or licensure in all other states, territories, or provinces where the applicant is currently or ever was certified or licensed to provide medical services, including permanent, temporary, and training licenses or certifications;

- 58.1.5 Two Board of Medical Practice reference forms including one from a recent supervising radiologist and one from another prior supervising radiologist;
- 58.1.5.1 Applicants with fewer than six months of substantially full-time (at least 30 hours per week) practice must provide a reference form from the director of the applicant's training program and another reference form from a radiologist who has supervised the applicant in practice or in training;
- 58.1.6 The Board of Medical Practice's Certificate of Radiologist Assistant Education form for primary source documentation of completion of a Board-approved radiologist assistant program sponsored by an institution of higher education, completed and submitted by the institution;
- 58.1.7 Primary source documentation of current certification sent directly to the Board by the American Registry of Radiologic Technologists (ARRT);
- 58.1.8 Completed Proposed Primary Supervising Radiologist form signed by the applicant and supervising radiologist;
- 58.1.9 Completed Proposed Secondary Supervising Radiologist form signed by the secondary supervising radiologist;
- 58.1.10 A protocol signed by the proposed primary supervising radiologist;
- 58.1.11 The Board of Medical Practice Radiologist Assistant Employment Contract form;
- 58.1.12 A copy of the employment contract with the primary supervising radiologist or the hospital at which the radiologist practices, or in the absence of a contract, other proof of employment by the primary supervising radiologist or by the hospital at which the radiologist practices, as may be determined by the Board;
- 58.1.13 The Uniform Application Affidavit and Authorization for Release of Information Form;
- 58.1.14 The applicant's CV (curriculum vitae) or résumé; and
- 58.1.15 National Practitioner Data Bank Self-Query Report. This must be a current Self-Query Report issued within 60 days of submission of the application. Information about obtaining a Self-Query Report is in the instructions to the application.
- 58.2** All applicants must submit a completed Board application package, provide required documentation as specified in the application form or requested by the Board, and pay the application fee. Documents submitted with the application become part of the official record and will not be returned.
- 58.3** At the discretion of the licensing committee or the Board, any applicant may be required to be interviewed by a Board member.

## **59.0 Temporary Certification**

**59.1** The Board may issue a temporary certification to an applicant who otherwise meets the requirements of 26 V.S.A. § 2854(1), (3) and (4) if:

59.1.1 The ARRT certification examination has not been offered since the applicant became eligible to take it; or

59.1.2 The applicant has taken the ARRT certification examination one time but has not yet received the results of the examination.

**59.2** The holder of a temporary certification shall take and successfully pass the next available ARRT examination. If the holder of a temporary certification does not take the examination, that temporary certification shall expire on the date of that examination. However, if the holder of a temporary certification can show that there was exceptional cause that prevented them from taking the examination, the Board may, in its discretion, and for good cause shown, renew the temporary certification until the date of the next available ARRT examination.

**59.3** If the holder of a temporary certification takes the first available ARRT examination but does not successfully pass it, the temporary certification shall expire on the day after receiving notice of the failure to pass the examination. In that case, the Board shall not renew the temporary certification. The applicant may re-apply for certification only after having taken and passed the examination.

## **60.0 Renewal of Certification**

**60.1** Certification shall be renewable every two years on completion of the online renewal form, payment of the required fee, and submission of: current contract; updated copies of primary and secondary supervision forms; updated protocol; verification of current licensure as a radiologic technologist in radiography in 26 V.S.A. ch. 51; and, verification of current active ARRT certification, including compliance with continuing education requirements.

**60.2** Lapsed licenses may be renewed under the provisions of 26 V.S.A. § 2856.

## **61.0 Change of Certification**

**61.1** The Board shall be notified and the appropriate applications and documentation filed whenever:

61.1.1 The radiologist assistant's protocol changes;

61.1.2 The radiologist assistant will be working at a different or an additional office or hospital; or

61.1.3 The radiologist assistant will be primarily supervised by a different radiologist.



- 61.2 Documents already on file with the Board may be referred to and need not be resubmitted.

## **62.0 More Than One Supervising Radiologist**

- 62.1 Each application for initial certification, temporary certification, renewal of certification or change of certification shall identify the primary supervising radiologist who shall be responsible for the radiologist assistant's professional activities and sign the protocol required under 26 V.S.A. § 2853.
- 62.2 Subject to the scope of practice restrictions in this rule and Chapter 52 of Title 26, the radiologist assistant may also perform services under the supervision of additional board-certified radiologists working in the same office or hospital as the primary supervising radiologist ("secondary supervising radiologist[s]"), but must file a protocol regarding that supervisory relationship and a statement from the secondary supervising radiologist of the responsibility for the professional activities of the radiologist assistant performed under supervision.

## **63.0 Termination of Supervision**

If the supervisory relationship between the primary supervising radiologist and the radiologist assistant is terminated for any reason, both parties must notify the Board directly and immediately in writing, using the Board's Termination of Contract form. The radiologist assistant shall cease practice until a new application is submitted by a primary supervising radiologist and is approved by the Board.

## **64.0 Practice**

- 64.1 A radiologist assistant shall perform only those tasks assigned on a case-by-case basis by the supervising radiologist. The radiologist assistant shall implement the personalized plan for each patient as individually prescribed by the supervising radiologist after that physician has completed a specific assessment of each patient. In determining which radiologic procedures to assign to a radiologist assistant, a supervising radiologist shall consider all of the following:
- 64.1.1 The education, training and experience of the radiologist assistant;
  - 64.1.2 The radiologist assistant's scope of practice as defined in Chapter 52 of Title 26 and this rule;
  - 64.1.3 The conditions on the practice of the radiologist assistant set out in the written practice protocol;
  - 64.1.4 The guidelines adopted by the American College of Radiology, the American Society of Radiologic Technologists, and the ARRT, as amended from time to time;

- 64.1.5 The physical proximity of the supervising radiologist and the radiologist assistant or assistants the radiologist may be supervising concurrently; and
- 64.1.6 The number of patients whose care is being supervised concurrently by the supervising radiologist.

## **65.0 Supervision**

- 65.1 A supervising radiologist shall supervise a radiologist assistant within the terms, conditions, and limitations set forth in the written practice protocol filed with the Board. Radiologist supervision requires, at all times, a direct, continuing and close supervisory relationship between a radiologist assistant and the supervising radiologist.
- 65.2 Supervision does not, necessarily, require the constant physical presence of the supervising radiologist; however, the radiologist must remain readily available in the facility for immediate diagnosis and treatment of emergencies.
- 65.3 The supervising radiologist shall ensure that, with respect to each patient, all activities, functions, services and treatment measures are immediately and properly documented in written form by the radiologist assistant. All written entries shall be reviewed, countersigned, and dated by the supervising radiologist. The supervising radiologist's signature on the medical record will fulfill this requirement for all written entries on the record.
- 65.4 Nothing in this section shall prohibit the supervising radiologist from addressing an emergency in another location in the facility.

## **66.0 Protocol and Scope of Practice**

- 66.1 A radiologist assistant's scope of practice is limited to procedures and treatments that the supervising radiologist performs in the practice.
- 66.2 A radiologist assistant may not interpret images, make diagnoses, or prescribe medications or therapies.
- 66.3 The radiologist assistant may assist the radiologist in developing and implementing a radiologic care plan for a patient. In so doing, the radiologist assistant may, in the discretion of the radiologist, perform patient assessment, patient management and selected examinations as outlined below:
  - 66.3.1 Obtaining consent for and injecting agents that facilitate and/or enable diagnostic imaging;
  - 66.3.2 Obtaining clinical history from the patient or medical record;
  - 66.3.3 Performing pre-procedure and post-procedure evaluation of patients undergoing invasive procedures;
  - 66.3.4 Assisting radiologists with invasive procedures;
  - 66.3.5 Performing fluoroscopy for non-invasive procedures with the radiologist providing direct supervision of the service;

- 66.3.6 Monitoring and tailoring selected examinations under direct supervision (i.e., IVU, CT program, GI studies, VCUG, and retrograde urethrograms);
- 66.3.7 Communicating the reports of radiologist's findings to the referring physician or an appropriate representative with appropriate documentation;
- 66.3.8 Providing naso-enteric and oro-enteric feeding tube placement in uncomplicated patients;
- 66.3.9 Performing selected peripheral venous diagnostic procedures; and
- 66.3.10 Any other activity that the Board approves in a protocol to allow for changing technology or practices in radiology.

## **67.0 Places of Practice**

A radiologist assistant shall work only in the office of the primary supervising radiologist or in the hospital in which the primary supervising radiologist practices.

## **68.0 Patient Notification and Consent**

Any physician, clinic, or hospital that uses the services of a radiologist assistant shall:

- 68.1** Post a clear notice to that effect in a conspicuous place;
- 68.2** Except in case of an emergency, include language in the patient consent form that the radiologist may use a radiologist assistant; and
- 68.3** Require each radiologist assistant to wear a name tag clearly indicating the title radiologist assistant.

## **69.0 Disciplinary Action**

- 69.1** All complaints and allegations of unprofessional conduct shall be processed in accordance with Section IV of this rule.
- 69.2** After notice and an opportunity for hearing, the Board may take disciplinary action against any applicant, radiologist assistant trainee, or radiologist assistant found guilty of unprofessional conduct, as provided by 3 V.S.A. §§ 129 and 809, and 26 V.S.A. § 2858, including but not limited to:
  - 69.2.1 Reprimand, suspend, revoke, limit, condition, deny or prevent renewal of certification;
  - 69.2.2 Required completion of continuing education;

69.2.3 Required supervised training or practice for a specified period of time or until a satisfactory evaluation by the supervising physician has been submitted to the Board.

**69.3** The Board may approve a negotiated agreement between the parties. The conditions or restrictions that may be included, without limitation, in addition to those above, in such an agreement are set forth in 3 V.S.A. § 809(d) and 26 V.S.A. § 2859(e).

**69.4** Right to Appeal a party aggrieved by a final decision of the Board may, within 30 days of the decision, appeal that decision by filing a notice of appeal with the Executive Director of the Vermont Board of Medical Practice, as provided by 26 V.S.A. § 1367 and 3 V.S.A. § 815.

## **SECTION VIII. NONDISCIPLINARY FINANCIAL PENALTIES.**

### **70.0 Introduction**

The Board has discretion to offer licensees the opportunity to resolve a violation of an applicable statute or rule by paying a nondisciplinary financial penalty as provided by 26 V.S.A. § 1377. If such an offer is made and accepted, and the specified penalty received, the matter will be closed with no further action. A licensee does not have the right to have a case resolved by nondisciplinary financial penalty if the Board does not extend an offer to resolve it in that manner.

**70.1.** As required by Act 126 of 2020, Sec. 8, the following table of violations and penalties is established.

70.1.1. Failure to maintain a current, valid mailing address, email address, or telephone number. \$25

70.1.2. Failure to disclose a pending malpractice case at the time of application for issuance of an initial or reinstated license. \$250

70.1.3. Failure to disclose a pending malpractice case at the time of application for issuance of a renewal license. \$100

70.1.4. Failure to disclose a pending investigation by the licensing authority of another jurisdiction at the time of application for issuance of an initial or reinstated license. \$250

70.1.5. Failure to disclose a pending investigation by the licensing authority of another jurisdiction at the time of application for a renewal license. \$100

- 70.1.6. Failure to disclose a pending investigation by a hospital, medical staff group, health care facility, professional association, or other body that has authority to take actions regarding the applicant's employment or right to practice medicine the time of application for issuance of an initial or reinstated license. \$250
- 70.1.7. Failure to disclose a pending investigation by a hospital, medical staff group, health care facility, professional association, or other body that has authority to take actions regarding the applicant's employment or right to practice medicine the time of application for issuance of a renewal license. \$100
- 70.1.8. Failure to disclose restriction or revocation of hospital privileges at the time of application for issuance of an initial or reinstated license. \$250
- 70.1.9. Failure to disclose restriction or revocation of hospital privileges at the time of application for a renewal license. \$100
- 70.1.10. Failure to disclose a felony criminal conviction that has not been expunged or overturned on an initial application. \$250
- 70.1.11. Failure to disclose a felony criminal conviction that has not been expunged or overturned on a renewal application. \$125
- 70.1.12. Failure to disclose a misdemeanor criminal conviction that has not been expunged or overturned on an initial application. \$125
- 70.1.13. Failure to disclose a misdemeanor criminal conviction that has not been expunged or overturned on a renewal application. \$75
- 70.1.14. Failure to disclose revocation or restriction of hospital privileges for reasons related to competence or character on an initial application. \$250
- 70.1.15. Failure to disclose revocation or restriction of hospital privileges for reasons related to competence or character on a renewal application. \$125
- 70.1.16. Failure to disclose voluntary surrender of a license to practice medicine or any other healing art after having been notified of an investigation that had not yet been resolved, or in lieu of a disciplinary action, on an initial application. \$250
- 70.1.17. Failure to disclose voluntary surrender of a license to practice medicine or any other healing art after having been notified of an investigation that had not yet been resolved, or in lieu of a disciplinary action on a renewal application. \$250

- 70.1.18. Failure to disclose licensure by other US jurisdictions on initial application. \$75 (per jurisdiction)
- 70.1.19. Failure to disclose licensure by other US jurisdictions on renewal application. \$50 (per jurisdiction)
- 70.1.20. Failure to inform the Board of new information of the types specified above when the applicant learns of it after the application is submitted but before an initial or reinstated license is granted. The same amount stated above for a failure to disclose.
- 70.1.21. Unspecified errors and omissions on any application. \$50 (per error or omission).
- 70.1.22. Working without a license during the first 48 hours after the license has lapsed. \$250
- 70.1.23. Certification on a license renewal application that the licensee has completed the Health Care Workforce Census, as required to renew, if the Workforce Census has not been completed. \$100
- 70.1.24. Certification on a license renewal application that the licensee has satisfied Continuing Medical Education requirements, if the requirements have not been completed. \$100 to \$250
- 70.2. In the event of repetition of the same violation at a later time, if the set penalty is less than \$250 the amount of the penalty may be doubled up to a maximum of \$250 for a single violation.

## **SECTION IX. PRE-APPLICATION DETERMINATION ON CRIMINAL BACKGROUND**

- 71.0 As provided by 26 V.S.A. § 1353(12), the Board will render a pre-application determination of whether an individual's criminal background would make the individual ineligible to be licensed or certified to practice one of the professions regulated by the Board.
- 72.0 A complete request for a pre-application determination regarding criminal background requires all of the following:
  - 72.1. Completion of a form requesting the pre-application determination;

- 72.2. Completion by the applicant of all steps necessary for the Board to receive a fingerprint-supported National Crime Information Center (NCIC) criminal background record check;
- 72.3. Submission of certified copies of all criminal convictions relating to each crime on the individual's criminal record;
- 72.4. Copies of the charges, information, or indictment relating to each conviction;
- 72.5. Any evidence of rehabilitation that the individual wishes to be considered by the Board in making the determination. Notarized affidavits may be submitted; live testimony will not be taken; and
- 72.6. Payment of the fee.
- 73.0 The request for determination will not be complete until all the above steps have been taken and the Board has received the NCIC record check.
- 74.0 The request for determination may be assigned to the Licensing Committee for the purpose of making a recommendation to the Board.

#### **SECTION X. SPECIAL PROVISION FOR LICENSING OF SPOUSES OF US MILITARY MEMBERS TRANSFERRED TO VERMONT.**

- 75.0 As provided by 26 V.S.A. § 1353(13)(A), the Board will take the following steps to expedite the licensure of applicants who are the spouse of a member of the United States Armed Forces who has been ordered to a duty station in Vermont, if the applicant is licensed in good standing for one of the professions regulated by the Board in another US jurisdiction and was employed in that profession at the time their spouse received orders to Vermont:
  - 75.1. Applicants with at least one year of practice in good standing while licensed in another US jurisdiction may apply using the procedures established in Section 16.0.
  - 75.2. For applicants who were accompanying their spouse at an overseas location, who were practicing in a position with the US government, and who were licensed in good standing in a US jurisdiction, such practice shall be accepted as the equivalent of practice in another US jurisdiction.
  - 75.3. For documents that are required to be submitted in printed form directly from the issuing authority, the Board will accept electronic copies on a provisional basis pending receipt of the printed original. Acceptance of such substitute documents will be conditioned on the applicant agreeing that there will be good cause for the Board to

revoke or suspend the license issued if the Board does not receive the original document within a reasonable period of not fewer than 90 days, or if there are any material deviations between the provisional document and the printed original later submitted to the Board.

- 76.0** Applicants requesting to use these special provisions must submit copies of their spouse's orders and other documentation to establish eligibility.

## **SECTION XI. SPECIAL FEE PROVISION FOR US MILITARY MEMBERS AND THEIR SPOUSES.**

- 77.0** As provided by 26 V.S.A. § 1401a(4), the established fees for licensure for the professions regulated by the Board will be waived for:
- 77.1.** An individual who is a member of the US Armed Forces and whose home of record is Vermont at the time of application to be licensed;
  - 77.2.** An individual who practices a profession licensed by the Board with the US Armed Forces and who is assigned to Vermont to practice that profession, so long as assigned to Vermont;
  - 77.3.** The spouse of a US Armed Forces member who is ordered to a duty station in Vermont so long as their spouse continues to be assigned to Vermont.
- 78.0** Eligibility for the fee waiver is determined at the time that the fee is due and continues through the end of the licensing period regardless of whether the military member is assigned to a different permanent duty station during the period. Individuals who request fee waiver will be required to submit copies of orders or other documentation to establish eligibility.

## **Section XI. RULES FOR REMOTE HEARINGS**

### **79.0 Scope**

- 79.1** Upon order of the Board of Medical Practice, or a Hearing Officer acting on the Hearing Officer's own behalf, a hearing may be held by telephone, video, or other electronic means ("Remote Hearings"). If a party objects to having all or part of a hearing conducted as a Remote Hearing the party must submit a written motion within 14 days, or sooner if specified in the order scheduling the remote hearing. In ruling on the objection, the Board or Hearing Officer shall consider the factors set forth in Vermont Rule of Civil Procedure 43.1. This section sets forth



procedures for conducting Remote Hearings.

**79.2** All other Sections of the Board of Medical Practice (“Sections”) not modified herein continue to apply. In the case where a standard set forth for Remote Hearings conflicts with a standard set forth in other sections, the standards in this section shall govern.

## **80.0 Pre-Hearing Administration**

### **80.1 Hearing Notice**

- 80.1.1 In addition to the other information required to be included in a notice of a hearing pursuant to 3 V.S.A. § 809 and 26 V.S.A. § 1372(b)(2) the notice of a remote hearing shall contain instructions and information, including phone numbers and website links and addresses, for participating in the remote hearing by web-based visual and audio communication or by telephone. If the telephone numbers and/or website links and addresses for remote participation are not established at the time a notice is issued, the notice may instead state that the hearing will be held by remote means, that the telephone numbers and or website information will be provided to parties no later than seven days prior to the hearing, and that the information will be publicly posted on the Board’s website no fewer than seven days prior to the hearing.
- 80.1.2 The notice of a remote hearing shall contain contact information for the Docket Clerk or another Board staff member who can be contacted during the hearing if a party encounters any difficulties with remote participation.
- 80.1.3 The notice shall instruct a party how to contact the Docket Clerk if the party is unable to participate in the hearing remotely.
- 80.1.4 A party may request a continuance in accordance with Section 40.2.2 if the party is unable to participate remotely in the hearing. The Board, hearing panel, or presiding officer shall determine whether to grant the motion for a continuance consistent with Section 40.2.2.
- 80.1.5 If a party needs a modification or an accommodation to be made to participate in the hearing remotely, the party may file a request. The non-requesting party shall be notified of the request for an accommodation or modification. If a requested accommodation or modification will substantially adversely affect the rights of the non-requesting party, the hearing panel shall determine whether to permit the accommodation or modification. For requested accommodations and modifications that will not adversely affect the rights on the non-requesting party, the Docket Clerk may approve accommodations or modifications after providing

notice of the request to the non-requesting party.

## **80.2 Pre-Hearing Filings**

80.2.1 Prior to the beginning of a hearing, documents may be filed by sending the filing to the Docket Clerk as an attachment to an email, by regular mail, or by facsimile. Regardless of the method of delivery, documents are only deemed filed upon receipt by the Docket Clerk.

80.2.2 Unless a different discovery and hearing schedule is issued by a hearing officer, filings submitted prior to a hearing must be received by the Docket Clerk no later than noon on the last business day prior to the scheduled hearing. Filings not received by the Docket Clerk by noon on the last business day prior to the scheduled hearing must be introduced at the hearing in accordance with Section 81.2.2.

80.2.3 Objections to the admissibility of pre-filed exhibits and responses to motions may be made at the scheduled hearing unless a discovery and hearing schedule issued by a hearing officer requires objections and responses to be filed by an earlier date. Objections to the admissibility of the pre-filed exhibit and responses to motions may also be made in writing by submitting a written objection or response to the Docket Clerk by noon on the last business day prior to the scheduled hearing.

80.2.4 Filings submitted prior to a hearing shall be served on the other party on the same day the filing is submitted to the Docket Clerk and using the same method of delivery unless otherwise agreed by the parties.

80.2.5 The procedures regarding electronic introduction of filings at a hearing set forth in Section 81.2.2 shall be followed.

## **80.3 Service**

80.3.1 Except for filings that are required to be served by certified mail, filings may be served on the other party via email and do not require regular mail or personal service. Service by regular mail and personal service remain acceptable means of service. The filing shall be served on the other party using the same method of delivery that is used to submit the filing to the Docket Clerk unless otherwise agreed by the parties.

80.3.2 Filings that are required by statute or other sections of this rule to be served by certified mail must be served by certified mail.

## **80.4 Form**

80.4.1 The subject line of the email containing a filing as an attachment shall indicate the name of the respondent.

80.4.2 A signature block containing the submitting party's typed-in name preceded by "/s/," or an electronic facsimile of the submitting party's signature, a scanned copy of it, or another form of electronic signature as defined in 9 V.S.A. § 271(9), will serve as a party's signature on pleadings, motions, and other documents that must be filed with a signature. This exception does not apply to affidavits, verified pleadings, or other signatures that must be notarized by statute.

80.4.3 Exhibits submitted for use during a hearing shall be marked for identification by the party submitting the exhibit. The respondent shall mark exhibits using letters and the State shall mark exhibits using numbers.

## **80.5 Timing**

80.5.1 Filings sent by email will be considered filed on the date sent if the email is received before 4:30 pm.

80.5.2 Nothing in these remote hearing rules extends filing deadlines.

## **81.0 Hearings Before a Hearing Panel**

### **81.1 Hearing Procedures**

#### **81.1.1 Prior to Hearing**

81.1.1.1 Prior to the scheduled hearing the Docket Clerk shall send the parties an email with the specification of charges, the answer, and applicable prehearing orders.

81.1.1.2 By noon on the last business day prior to the scheduled hearing, the parties and the members of the hearing panel shall provide the Docket Clerk a phone number and email address at which the party or board member can be reached during the remote hearing.

#### **81.1.2 Commencement of Hearing**

81.1.2.1 A party is responsible for connecting to the remote hearing via

the web-based audio and visual system or telephone number provided in the hearing notice. Parties shall participate in the scheduled hearing using audio communication, either web-based or telephone, at a minimum. A hearing officer may order a party to participate using video upon request of a party and showing of a reasonable basis for the request.

81.1.2.2 At the beginning of a scheduled hearing, the hearing officer shall confirm the presence of both parties and their representatives, when applicable.

81.1.2.3 Parties shall be present at the time provided in the hearing notice via the web-based audio and visual communication link or by telephone. If there is more than one hearing scheduled, the order of hearings will be decided by the hearing officer. The first hearing shall begin at the time stated on the hearing notice. Subsequent hearings will occur after the conclusion of the previous hearing.

#### 81.1.3 Hearing Conduct.

81.1.3.1 Scheduled hearings shall be conducted in accordance 1 V.S.A. Chapter 5 and 26 V.S.A. Chapter 23.

81.1.3.2 At the beginning of the hearing, upon request from the hearing officer, each party shall state their full name for the record.

81.1.3.3 The parties shall keep the audio connection through which the party is participating in the hearing muted while not speaking.

81.1.3.4 If a party is not able to hear the hearing officer, hearing panel, or the other party, the party shall un-mute their audio communication system and notify the hearing officer.

81.1.3.5 The hearing officer shall administer oaths and affirmations, as required by law, using the audio and, if available, visual communication systems.

#### 81.1.4 Hearing Panel Members.

81.1.4.1 When participating in a hearing remotely, hearing panel

members shall comply with the requirements of 26 V.S.A. § 1318.

81.1.4.2 By noon on the day prior to the scheduled hearing, each hearing panel member shall provide to the Docket Clerk an email address for a current email account that the member can access during the hearing.

81.1.4.3 During a scheduled hearing, the Docket Clerk shall send all filings and required written communications to the hearing panel members at the email address provided to the Docket Clerk.

81.1.4.4 During a scheduled hearing, hearing panel members shall monitor the email account submitted to the Docket Clerk, and immediately review emails received from the Docket Clerk and other Board Office staff.

## **81.2 Record**

81.2.1 Recording and Transcript. The hearing shall be recorded. Parties may request a transcript from the Docket Clerk. The party requesting a copy of the transcript must pay to the Board Office the estimated cost of producing a copy of the transcript.

### **81.2.2 Introduction of Documents During Hearing**

81.2.2.1 All filings to be considered by the hearing panel during a hearing shall be filed with the Docket Clerk in advance of the scheduled hearing in accordance with Section 80.2.1, or during the hearing in accordance with the procedures set forth in this subsection. Filings that are not received by the Docket Clerk by noon on the last business day prior to the scheduled hearing must be submitted during the hearing.

#### **81.2.2.2 Exhibits**

81.2.2.2.1 Exhibits proffered during a hearing that a party wishes to offer to be admitted as evidence shall be emailed as an attachment to the Docket Clerk and the other party. The form of the exhibit shall comply with the form requirements of Section 80.4.

81.2.2.2.2 Once the proffered exhibit is received by the Docket Clerk, the Docket Clerk shall email the exhibit as an

attachment to the hearing officer presiding at the hearing and to the other, non-filing party.

81.2.2.2.3 After receipt of the email from the Docket Clerk with the exhibit attached, the hearing officer and the other, non-filing party shall have a reasonable amount of time, as determined by the hearing officer, to review the exhibit.

81.2.2.2.4 The non-filing party shall have the opportunity to oppose the admission of an offered exhibit.

81.2.2.2.5 The hearing officer shall rule on whether to admit the exhibit in accordance with Section 40.4 and 3 V.S.A. § 810.

81.2.2.2.6 If the hearing officer rules that an exhibit is to be admitted into evidence, the Docket Clerk shall send an email with the exhibit attached to all members of the hearing panel.

81.2.2.2.7 Members of the hearing panel shall not retain any copies, including electronic or physical copies, of the exhibit after the conclusion of the hearing.

#### 81.2.2.3 Motions

81.2.2.3.1 Written motions made during a hearing shall be emailed as an attachment to the Docket Clerk and the non-filing party. Motions may also be made orally during a hearing.

81.2.2.3.2 A written motion shall be signed in accordance with Section 80.4.2.

81.2.2.3.3 Upon receipt of a written motion during a hearing, the Docket Clerk shall send the motion to the hearing officer and the hearing panel members.

81.2.2.3.4 The non-filing party shall have the opportunity to respond to a motion.

81.2.2.3.5 The hearing officer shall decide whether to grant or deny a motion.

### **81.3 Witnesses**

- 81.3.1 Witnesses called by a party shall testify by telephone or via web-based audio or visual communication.
- 81.3.2 The party calling the witness shall be responsible for providing the witness with the necessary information for participating in the scheduled hearing, including all necessary phone numbers, email addresses, and website addresses. It is the responsibility of the party calling the witness to ensure that the witness is available when called upon to testify during the scheduled hearing.
- 81.3.3 The party calling the witness shall provide the Docket Clerk with a phone number and email address for the witness. In the event of technical challenges or a need to dismiss and then recall a witness, the Docket Clerk shall telephone the witness with further instructions about when the witness is recalled to testify.

### **81.4 Deliberative Session**

- 81.4.1 The hearing panel shall have the opportunity to engage in deliberations, as defined in 1 V.S.A. § 310(2), about the contested case presented at the scheduled hearing. Deliberations by the hearing panel may occur in a deliberative session in accordance with 1 V.S.A. § 312(e).
- 81.4.2 Prior to the scheduled hearing, the Docket Clerk shall email to the hearing panel members and the hearing officer a conference call telephone number or information for an audio and visual communication system link that shall be available only to those participating in deliberations, to be used for the deliberative session.
- 81.4.3 After the hearing panel votes to enter into a deliberative session, the hearing panel members shall exit the audio and visual communication system or end the telephone call through which the hearing panel member is participating in the hearing. The parties shall remain available on the audio and visual communication system or the telephone during the deliberative session. The hearing panel members shall then use the conference call telephone number or audio and visual communication system link provided by the Docket Clerk prior to the scheduled hearing. The deliberative session shall be held on the medium that is available only to those participating in the deliberations.
- 81.4.4 At the conclusion of the deliberative session, the hearing panel members shall reconnect to the audio and visual communication system or the telephone line on which the hearing is being held. The hearing officer will notify the Docket Clerk and the parties that the hearing is resuming and shall provide the parties and the Docket Clerk with a reasonable amount of time to resume. Decisions by the hearing panel announced following a deliberative session shall be made by motion and voted upon by the members in an open session on the record.

### **81.5 Hearing Panel Report**

The hearing officer shall prepare a report of the hearing panel's findings of fact and recommendations to the Board in accordance with 26 V.S.A. § 1372(c) and Section 40.5. The Docket Clerk shall serve the report on the parties by sending it as an attachment to an email. The Docket Clerk shall send the report to other individuals on request.

## **82.0 Hearing Before the Board**

### **82.1 Hearing Procedures**

#### **82.1.1 Applicability**

All of Section 82.0 applies in full to contested hearings before the Board. With regard to hearings before the Board for the purpose of consideration and approval of a stipulation and consent order, only this section, 82.1, applies.

#### **82.1.2 Prior to Hearing**

82.1.2.1 Prior to the scheduled hearing, the Docket Clerk shall send the parties an email with the specification of charges, the answer, and applicable pre-hearing orders.

82.1.2.2 By noon on the last business day prior to the scheduled hearing, the parties shall provide the Docket Clerk with a phone number and email address at which the party can be reached in the event of a malfunction during the remote hearing.

#### **82.1.3 Commencement of Hearing**

82.1.3.1 A party is responsible for connecting to the remote hearing via the web-based audio and visual system or telephone number provided in the hearing notice. Parties shall participate in the scheduled hearing using audio communication, either web-based or telephone, at a minimum. A hearing officer may order a party to participate using video upon request of a party and showing of a reasonable basis for the request.

82.1.3.2 At the beginning of a scheduled hearing, the hearing officer shall confirm the presence of both parties and their representatives, when applicable.

82.1.3.3 Parties shall be present at the time provided in the hearing notice via the web-based audio and visual communication link or by telephone. If there is more than one hearing scheduled, the order of hearings will be decided by the hearing officer. The first hearing shall begin at the time stated on the hearing notice.



Subsequent hearings will occur after the conclusion of the previous hearing.

#### 82.1.4 Hearing Conduct

82.1.4.1 Scheduled hearings shall be conducted in accordance 1 V.S.A. Chapter 5.

82.1.4.2 At the beginning of the hearing, upon request from the hearing officer, each party shall state their full name for the record.

82.1.4.3 The parties shall keep the audio connection, through which the party is participating in the hearing, muted while not speaking.

82.1.4.4 If a party is not able to hear the hearing officer, a Board member, or the other party, the party shall un-mute their audio communication system and notify the hearing officer.

82.1.4.5 The hearing officer shall identify the Board members who are eligible and participating in the hearing on the record.

82.1.4.6 The hearing officer shall administer oaths and affirmations, as required by law, using the audio and, if available, visual communication systems.

#### 82.1.5 Board Members Hearing the Case

82.1.5.1 When participating in a hearing remotely, Board members shall comply with the requirements of 26 V.S.A. § 1318.

82.1.5.2 By noon on the day prior to the scheduled hearing, each Board member shall provide to the Docket Clerk an email address for a current email account that the member can access during the hearing.

82.1.5.3 During a scheduled hearing, the Docket Clerk shall send all filings and required written communications to the participating Board members at the email address provided to the Docket Clerk.

82.1.5.4 During a scheduled hearing, participating Board members shall monitor the email account submitted to the Docket Clerk, and immediately review emails received from the Docket Clerk and other Board Office staff.

## **82.2 Record**

### **82.2.1 Recording and Transcript**

The hearing shall be recorded. Parties may request a transcript from the Docket Clerk. The party requesting a copy of the transcript must pay to the Board Office the estimated cost of producing a copy of the transcript.

### **82.2.2 Introduction of Documents During Hearing**

82.2.2.1 All filings to be considered by the Board during a hearing that are not already a part of the record shall be filed with the Docket Clerk in advance of the scheduled hearing in accordance with Section 80.2.1, or during the hearing in accordance with the procedures set forth in this subsection. Filings not received by the Docket Clerk by noon on the last business day prior to the scheduled hearing must be submitted during the hearing.

#### **82.2.2.2 Exhibits**

82.2.2.2.1 Exhibits submitted during a hearing shall be emailed as an attachment to the Docket Clerk and the other party. The form of the exhibit shall comply with the form requirements set forth in Section 80.4.

82.2.2.2.2 Once the exhibit is received by the Docket Clerk, the Docket Clerk shall email the exhibit as an attachment to the hearing officer presiding at the hearing and the other, non-filing party.

82.2.2.2.3 After receipt of the email from the Docket Clerk with the exhibit attached, the hearing officer and the other, non-filing party shall have a reasonable amount of time, as determined by the hearing officer, to review the exhibit.

82.2.2.2.4 The non-filing party shall have the opportunity to oppose the admission of an offered exhibit.

82.2.2.2.5 The hearing officer shall rule on whether to admit the exhibit in accordance with Section 40.4 and 3 V.S.A. § 810.

82.2.2.2.6 If the hearing officer rules that an exhibit is to be admitted into evidence, the Docket Clerk shall send an email with the exhibit attached to members of the Board who are hearing the case.

82.2.2.2.7 Members shall not retain any copies, including electronic or physical copies, of the exhibits after the conclusion of the hearing.

#### 82.2.2.3 Motions

82.2.2.3.1 Written motions made during a hearing shall be emailed as an attachment to the Docket Clerk and the non-filing party. Motions may also be made orally during a hearing.

82.2.2.3.2 A written motion shall be signed in accordance with Section 80.4.2.

82.2.2.3.3 Upon receipt of a written motion during a hearing, the Docket Clerk shall send the motion to the Board members hearing the case.

82.2.2.3.4 The non-filing party shall have the opportunity to respond to a motion.

82.2.2.3.5 The hearing officer shall decide whether to grant or deny a motion.

#### 82.3 Witnesses

82.3.1 Witnesses called by a party shall testify by telephone or via web-based audio or visual communication.

82.3.2 The party calling the witness shall be responsible for providing the witness with the necessary information for participating in the scheduled hearing, including all necessary phone numbers, email addresses, and website addresses. It is the responsibility of the party calling the witness to ensure that the witness is available when called upon to testify during the scheduled hearing.

82.3.3 The party calling the witness shall provide the Docket Clerk with a

phone number and email address for the witness. In the event of technical challenges or a need to dismiss and then recall a witness, the Docket Clerk shall telephone the witness with further instructions about when the witness is recalled to testify.

#### **82.4 Deliberative Session**

- 82.4.1 The participating Board members shall have the opportunity to engage in deliberations, as defined in 1 V.S.A. § 310(2), about the contested case presented at the scheduled hearing. Deliberations by the participating Board members may occur in a deliberative session in accordance with 1 V.S.A. § 312(e).
- 82.4.2 Prior to the scheduled hearing, the Docket Clerk shall email to the participating Board members and the hearing officer a conference call telephone number or information for an audio and visual communication system link that shall be available only to those participating in deliberations, to be used for the deliberative session.
- 82.4.3 After the participating Board members vote to enter into a deliberative session, the members shall exit the audio and visual communication system or end the telephone call through which members are participating in the hearing. The parties shall remain available on the audio and visual communication system or the telephone during the deliberative session. The participating Board members shall then use the conference call telephone number or audio and visual communication system link provided by the Docket Clerk prior to the scheduled hearing. The deliberative session shall be held on the medium that is available only to those participating in the deliberations.
- 82.4.4 At the conclusion of the deliberative session, the participating Board members shall reconnect to the audio and visual communication system or the telephone line on which the hearing is being held. The hearing officer will notify the Docket Clerk and the parties that the hearing is resuming and shall provide the parties and the Docket Clerk with a reasonable amount of time to resume. Decisions by the Board announced following a deliberative session shall be made by motion and voted upon by the members in an open session on the record.

#### **82.5 Board Decision**

The Board shall issue a written decision of its findings and conclusions in accordance with 26 V.S.A. § 1374. The Board may have the assistance of the hearing officer in preparing its written decision. 26 V.S.A. § 1353(2).

## **82.6 Appeals**

82.6.1 A party may appeal a decision of the Board in accordance with 26 V.S.A. 1367 and Section 41.3.

82.6.2 Parties may submit written notices and filings to the Docket Clerk, and other parties by email, mail, or facsimile.

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VERMONT **GENERAL ASSEMBLY**

# The Vermont Statutes Online

## Title 26 : Professions And Occupations

### Chapter 023 : Medicine

#### Subchapter 002 : Board Of Medical Practice

(Cite as: 26 V.S.A. § 1351)

#### § 1351. Board of Medical Practice

(a) The Board of Medical Practice is created. The Board shall be composed of 17 members, nine of whom shall be licensed physicians, one of whom shall be a physician assistant licensed pursuant to chapter 31 of this title, one of whom shall be a podiatrist licensed pursuant to chapter 7 of this title, and six of whom shall be persons not associated with the medical field. The Governor, with the advice and consent of the Senate, shall appoint the members of the Board. Appointments shall be for a term of five years, except that a vacancy occurring during a term shall be filled by an appointment by the Governor for the unexpired term. No member shall be appointed to more than two consecutive full terms, but a member appointed for less than a full term, originally or to fill a vacancy, may serve two full terms in addition to such part of a full term, and a former member shall again be eligible for appointment after a lapse of one or more years. Any member of the Board may be removed by the Governor at any time. The Board shall elect from its members a chair, vice chair, and secretary who shall serve for one year and until their successors are appointed and qualified. The Board shall meet upon the call of the Chair or the Commissioner of Health, or at such other times and places as the Board may determine. Except as otherwise provided in sections 1372, 1373, and 1374 of this title, nine members of the Board shall constitute a quorum for the transaction of business. The affirmative vote of the majority of the members present and voting shall be required to carry any motion or resolution, to adopt any rule, to pass any measure, or to authorize any decision or order of the Board.

(b) In the performance of their duties, members of the Board shall be paid a per diem and their actual and necessary expenses as provided by 32 V.S.A. § 1010(b).

(c) The Board of Medical Practice is established as an office within the Department of Health. With respect to the Board, the Commissioner shall have the following powers and duties to:

(1) Appoint a director of the office.

(2) Employ or contract for legal counsel and such assistants as may be required, to fix the compensation to be paid for these services, and to incur such other expenses as

the Commissioner determines are necessary.

(3) Employ, contract, or make arrangements for the performance of administrative, investigative, and similar services required or appropriate in the performance of the duties of the Board.

(4) Act as custodian of the records of the Board.

(5) Prepare an annual budget and administer money appropriated to the Board by the General Assembly. The budget of the Board shall be part of the budget of the Department. A Board of Medical Practice Regulatory Fee Fund is created. All Board regulatory fees received by the Department shall be deposited into this Fund and used to offset up to two years of the costs incurred by the Board, and shall not be used for any purpose other than professional regulation and responsibilities of the Board, as determined by the Commissioner of Health. To ensure that revenues derived by the Department are adequate to offset the cost of regulation, the Commissioner shall review fees from time to time, and present proposed fee changes to the General Assembly.

(6) Prepare and maintain a registry of all physicians licensed by the Board.

(7) Make available an accounting of all fees and fines received by the Board and all expenditures and costs of the Board annually.

(d) The Commissioner of Health shall appoint, and may terminate the employment of, the Director, administrative support staff, and any investigator or private legal counsel employed or retained by the Board.

(e) The Commissioner of Health shall adopt, amend, and repeal rules of the Board that the Commissioner determines necessary to carry out the provisions of this chapter and chapters 7, 29, 31, and 52 of this title.

(f)(1) A classified State employee who is employed as an investigator by the Department of Health who is certified as a Level III law enforcement officer under 20 V.S.A. chapter 151 shall have the same powers as sheriffs in criminal matters and the enforcement of the law and in serving criminal process, and shall have all the immunities and matters of defense now available or hereafter made available to sheriffs in a suit brought against him or her in consequence for acts done in the course of his or her employment.

(2) A Board of Medical Practice investigator employed by the Department of Health who is not certified as a Level III law enforcement officer under 20 V.S.A. chapter 151 shall annually obtain a minimum of 25 hours of training regarding the methods of conducting investigations of alleged unprofessional conduct, as approved by the Board.

(3) Any Board of Medical Practice investigator employed by the Department of Health shall obtain as soon as practicable and thereafter maintain certification by a nationally or regionally recognized entity regarding the investigation of licensing cases,

as approved by the Board. (Amended 1969, No. 187 (Adj. Sess.), § 2; 1975, No. 249 (Adj. Sess.), § 2; 1977, No. 91, § 1, eff. May 5, 1977; 1981, No. 100, § 12; 1985, No. 208 (Adj. Sess.), § 18, eff. June 30, 1986; 1989, No. 102, § 1; 1989, No. 250 (Adj. Sess.), § 92; 2001, No. 129 (Adj. Sess.), § 21, eff. June 13, 2002; 2001, No. 132 (Adj. Sess.), § 5, eff. June 13, 2002; 2003, No. 34, § 6, eff. May 23, 2003; 2003, No. 122 (Adj. Sess.), § 117a; 2009, No. 103 (Adj. Sess.), § 19d, eff. May 12, 2010; 2011, No. 61, § 2, eff. June 2, 2011; 2013, No. 130 (Adj. Sess.), § 3; 2013, No. 141 (Adj. Sess.), § 20, eff. July 1, 2015; 2015, No. 2, § 5, eff. March 12, 2015; 2015, No. 2, § 6; 2019, No. 126 (Adj. Sess.), § 1.)



VERMONT **GENERAL ASSEMBLY**

# The Vermont Statutes Online

## Title 3 : Executive

### Chapter 025 : Administrative Procedure

#### Subchapter 001 : General Provisions

(Cite as: 3 V.S.A. § 801)

#### § 801. Short title and definitions

(a) This chapter may be cited as the "Vermont Administrative Procedure Act."

(b) As used in this chapter:

(1) "Agency" means a State board, commission, department, agency, or other entity or officer of State government, other than the Legislature, the courts, the Commander in Chief, and the Military Department, authorized by law to make rules or to determine contested cases.

(2) "Contested case" means a proceeding, including but not restricted to rate-making and licensing, in which the legal rights, duties, or privileges of a party are required by law to be determined by an agency after an opportunity for hearing.

(3) "License" includes the whole or part of any agency permit, certificate, approval, registration, charter, or similar form of permission required by law.

(4) "Licensing" includes the agency process respecting the grant, denial, renewal, revocation, suspension, annulment, withdrawal, or amendment of a license.

(5) "Party" means each person or agency named or admitted as a party, or properly seeking and entitled as of right to be admitted as a party.

(6) "Person" means any individual, partnership, corporation, association, governmental subdivision, or public or private organization of any character other than an agency.

(7) "Practice" means a substantive or procedural requirement of an agency, affecting one or more persons who are not employees of the agency, that is used by the agency in the discharge of its powers and duties. The term includes all such requirements, regardless of whether they are stated in writing.

(8) "Procedure" means a practice that has been adopted in writing, either at the election of the agency or as the result of a request under subsection 831(b) of this title. The term includes any practice of any agency that has been adopted in writing, whether or not labeled as a procedure, except for each of the following:

(A) a rule adopted under sections 836-844 of this title;

(B) a written document issued in a contested case that imposes substantive or procedural requirements on the parties to the case;

(C) a statement that concerns only:

(i) the internal management of an agency and does not affect private rights or procedures available to the public;

(ii) the internal management of facilities that are secured for the safety of the public and the individuals residing within them; or

(iii) guidance regarding the safety or security of the staff of an agency or its designated service providers or of individuals being provided services by the agency or such a provider;

(D) an intergovernmental or interagency memorandum, directive, or communication that does not affect private rights or procedures available to the public;

(E) an opinion of the Attorney General; or

(F) a statement that establishes criteria or guidelines to be used by the staff of an agency in performing audits, investigations, or inspections, in settling commercial disputes or negotiating commercial arrangements, or in the defense, prosecution, or settlement of cases, if disclosure of the criteria or guidelines would compromise an investigation or the health and safety of an employee or member of the public, enable law violators to avoid detection, facilitate disregard of requirements imposed by law, or give a clearly improper advantage to persons that are in an adverse position to the State.

(9) "Rule" means each agency statement of general applicability that implements, interprets, or prescribes law or policy and that has been adopted in the manner provided by sections 836-844 of this title.

(10) "Incorporation by reference" means the use of language in the text of a regulation that expressly refers to a document other than the regulation itself.

(11) "Adopting authority" means, for agencies that are attached to the Agencies of Administration, of Commerce and Community Development, of Natural Resources, of Human Services, and of Transportation, or any of their components, the secretaries of those agencies; for agencies attached to other departments or any of their components, the commissioners of those departments; and for other agencies, the chief officer of the agency. However, for the procedural rules of boards with quasi-judicial powers, for the Transportation Board, for the Vermont Veterans' Memorial Cemetery Advisory Board, and for the Fish and Wildlife Board, the chair or executive secretary of the board shall be the adopting authority. The Secretary of State shall be the adopting authority for the Office of Professional Regulation.

(12) "Small business" means a business employing no more than 20 full-time

employees.

(13)(A) "Arbitrary," when applied to an agency rule or action, means that one or more of the following apply:

(i) There is no factual basis for the decision made by the agency.

(ii) The decision made by the agency is not rationally connected to the factual basis asserted for the decision.

(iii) The decision made by the agency would not make sense to a reasonable person.

(B) The General Assembly intends that this definition be applied in accordance with the Vermont Supreme Court's application of "arbitrary" in *Beyers v. Water Resources Board*, 2006 VT 65, and *In re Town of Sherburne*, 154 Vt. 596 (1990).

(14) "Guidance document" means a written record that has not been adopted in accordance with sections 836-844 of this title and that is issued by an agency to assist the public by providing an agency's current approach to or interpretation of law or describing how and when an agency will exercise discretionary functions. The term does not include the documents described in subdivisions (8)(A) through (F) of this section.

(15) "Index" means a searchable list of entries that contains subjects and titles with page numbers, hyperlinks, or other connections that link each entry to the text or document to which it refers. (Added 1967, No. 360 (Adj. Sess.), § 1, eff. July 1, 1969; amended 1981, No. 82, § 1; 1983, No. 158 (Adj. Sess.), eff. April 13, 1984; 1985, No. 56, § 1; 1985, No. 269 (Adj. Sess.), § 4; 1987, No. 76, § 18; 1989, No. 69, § 2, eff. May 27, 1989; 1989, No. 250 (Adj. Sess.), § 88; 2001, No. 149 (Adj. Sess.), § 46, eff. June 27, 2002; 2017, No. 113 (Adj. Sess.), § 3; 2017, No. 156 (Adj. Sess.), § 2.)

VERMONT **GENERAL ASSEMBLY**

# The Vermont Statutes Online

## Title 3 : Executive

### Chapter 025 : Administrative Procedure

#### Subchapter 003 : Rulemaking; Procedures; Guidance Documents

(Cite as: 3 V.S.A. § 831)

#### § 831. Required policy statements and rules

(a) Where due process or a statute directs an agency to adopt rules, the agency shall initiate rulemaking and adopt rules in the manner provided by sections 836-844 of this title.

(b) An agency shall adopt a procedure describing an existing practice when so requested by an interested person.

(c) An agency shall initiate rulemaking to adopt as a rule an existing practice or procedure when so requested by 25 or more persons or by the Legislative Committee on Administrative Rules. An agency shall not be required to initiate rulemaking with respect to any practice or procedure, except as provided by this subsection.

(d) An agency required to hold hearings on contested cases as required by section 809 of this title shall adopt rules of procedure in the manner provided in this chapter.

(e) Within 30 days after an agency discovers that the text of a final proposed rule as submitted to the Legislative Committee on Administrative Rules deviates from the text that the agency intended to submit to the Committee, the agency shall initiate rulemaking to correct the rule if the period for final adoption of the rule under subsection 843(c) of this title has elapsed.

(f) Except as provided in subsections (a)-(e) of this section, an agency shall not be required to initiate rulemaking or to adopt a procedure or a rule. (Added 1981, No. 82, § 6; amended 1995, No. 61, § 1; 2001, No. 149 (Adj. Sess.), § 48, eff. June 27, 2002; 2017, No. 156 (Adj. Sess.), § 2.)



# Proposed Rules Postings

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## Search Rules

### Deadline For Public Comment

Deadline: Dec 16, 2021

Please submit comments to the agency or primary contact person listed below, before the deadline.

### Rule Details

Rule Number:	21P034
Title:	Rules of the Board of Medical Practice.
Type:	Standard
Status:	Proposed
Agency:	Department of Health, Agency of Human Services
Legal Authority:	26 V.S.A. § 1351(e), 3 V.S.A. § 801(b)(11), and 3 V.S.A. § 831(d).
Summary:	The proposed changes update existing rules to reflect changes to statute enacted that modified: 1) the qualifications for physician licensure; 2) the Board's powers and duties, and the Board's complaint, investigation, and hearing processes; 3) the

requirements for Physician Assistants; and, 4) the provision for reciprocity of licensure from any other state when in good standing. It also makes operational a new option in law for the Board to offer non-disciplinary penalties for administrative infractions in lieu of possible discipline. Last, it provides written procedures for the Board to conduct hearings remotely when needed.

**Persons Affected:**

Physicians, physician assistants, physician employers, and Vermonters seeking medical care.

**Economic Impact:**

Most provisions will have no economic impact. Waiving licensing fees for military spouses accompanying a member ordered to Vermont could affect fees (\$120 - \$650), but the potential for economic impact is remote given that Vermont has no active-duty military bases. The provisions regarding non-disciplinary administrative penalties specify the amounts for various offenses up to the \$250 maximum set in law. However, in that the offenses are already subject to the imposition of an administrative penalty up to \$1,000 using existing disciplinary processes, it would be highly speculative to infer any economic impact. It only operationalizes an alternative procedure authorized by the change in law. Finally, there could be a small savings in expenses to the Board if some hearings are held remotely; that would avoid some expenses paid to members who would otherwise travel to hearings. Other participants would also avoid travel expenses.

**Posting date:**

Oct 20, 2021

## Hearing Information

### Information for Hearing # 1

**Hearing date:**

12-09-2021 3:00 PM

[ADD TO YOUR CALENDAR](#)

**Location:**

Department of Health

**Address:**

108 Cherry Street, Rm. 2A

**City:**

Burlington

**State:**

VT

**Zip:**

05401

**Hearing Notes:**

## Contact Information

**Information for Contact # 1**

Level: Primary  
Name: Brendan Atwood  
Agency: Department of Health, Agency of Human Services  
Address: 108 Cherry Street  
City: Burlington  
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Zip: 05401  
Telephone: 802-863-7280  
Fax: 802-951-1275  
Email: [ahs.vdhrules@vermont.gov](mailto:ahs.vdhrules@vermont.gov)  
[SEND A COMMENT](#)  
Website: <http://www.healthvermont.gov/about-us/laws-regulations/public-comment>  
Address: [VIEW WEBSITE](#)

**Information for Contact # 2**

Level: Secondary  
Name: David Englander  
Agency: Department of Health, Agency of Human Services  
Address: 108 Cherry Street  
City: Burlington  
State: VT  
Zip: 05401  
Telephone: 802-863-7280  
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**Keyword Information**

Keywords:

The Board's Licensees  
Board of Medical Practice  
Physician  
Physician Assistant  
Doctor  
Virtual Hearing

[Back](#)

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	The Islander ( <a href="mailto:islander@vermontislander.com">islander@vermontislander.com</a> )	Tel: 802-372-5600 FAX: 802-372-3025
	Vermont Lawyer ( <a href="mailto:hunter.press.vermont@gmail.com">hunter.press.vermont@gmail.com</a> )	Attn: Will Hunter

FROM: APA Coordinator, VSARA

Date of Fax: February 28, 2022

RE: The "Proposed State Rules " ad copy to run on

October 28, 2021

PAGES INCLUDING THIS COVER MEMO:

2

**\*NOTE\* 8-pt font in body. 12-pt font max. for headings - single space body. Please include dashed lines where they appear in ad copy. Otherwise minimize the use of white space. Exceptions require written approval.**

If you have questions, or if the printing schedule of your paper is disrupted by holiday etc. please contact VSARA at 802-828-3700, or E-Mail [sos.statutoryfilings@vermont.gov](mailto:sos.statutoryfilings@vermont.gov), Thanks.



## PROPOSED STATE RULES

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By law, public notice of proposed rules must be given by publication in newspapers of record. The purpose of these notices is to give the public a chance to respond to the proposals. The public notices for administrative rules are now also available online at <https://secure.vermont.gov/SOS/rules/>. The law requires an agency to hold a public hearing on a proposed rule, if requested to do so in writing by 25 persons or an association having at least 25 members.

To make special arrangements for individuals with disabilities or special needs please call or write the contact person listed below as soon as possible.

To obtain further information concerning any scheduled hearing(s), obtain copies of proposed rule(s) or submit comments regarding proposed rule(s), please call or write the contact person listed below. You may also submit comments in writing to the Legislative Committee on Administrative Rules, State House, Montpelier, Vermont 05602 (802-828-2231).

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Licensing Regulations for Registered and Licensed Family Child Care Homes.

Vermont Proposed Rule: 21E17

AGENCY: Agency of Human Services, Department for Children and Families

CONCISE SUMMARY: Rule 2.7 (Rule Variance) is amended to exempt rules 3.4 (Nondiscriminatory Enrollment), 4.7 (Communicating CBCCPP Policies and Procedures), 6.1.4.3 (Respect for Diversity), and 6.2.3 (Quality of Interactions).

FOR FURTHER INFORMATION, CONTACT: Heidi Moreau, Vermont Agency of Human Services, Department for Children & Families, HC 1 South, 280 State Drive, Waterbury, VT 05671- 1080 Tel: 802-595-9639 Email: [heidi.moreau@vermont.gov](mailto:heidi.moreau@vermont.gov) URL: <https://dcf.vermont.gov/cdd/laws-regs>.

FOR COPIES: Christel Michaud, Vermont Agency of Human Services, Department for Children & Families, Child Development Division, NOB1, 280 State Drive, Waterbury, VT 05671-1040 Tel: 802-224-6940 Email: [christel.michaud@vermont.gov](mailto:christel.michaud@vermont.gov).

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Licensing Regulations for Afterschool Child Care Programs.

Vermont Proposed Rule: 21E18

AGENCY: Agency of Human Services, Department for Children and Families

CONCISE SUMMARY: Rule 3.15 is amended to include non-discriminatory enrollment language found in both the Center Based Child Care and Preschool Program (CBCCPP) licensing regulations and Registered and Licensed Family Child Care Homes (FCCH) licensing regulations. Rule 4.7 is amended to include the non-discrimination assurance language found in both the CBCCPP and FCCH licensing regulations. Rule 8.6 is amended to include the respect for diversity language found in both the CBCCPP and FCCH licensing regulations. Rule 18.66 (Rule Variance) is amended to exempt rules 3.15, 4.7, and 8.6.

FOR FURTHER INFORMATION, CONTACT: Heidi Moreau, Vermont Agency of Human Services, Department for Children & Families, HC 1 South, 280 State Drive, Waterbury, VT 05671- 1080 Tel: 802-595-9639 Email: [heidi.moreau@vermont.gov](mailto:heidi.moreau@vermont.gov) URL: <https://dcf.vermont.gov/cdd/laws-regs>.

FOR COPIES: Christel Michaud, Vermont Agency of Human Services, Department for Children & Families, Child

Development Division, NOB1, 280 State Drive, Waterbury, VT 05671-1040 Tel: 802-224-6940 Email: [christel.michaud@vermont.gov](mailto:christel.michaud@vermont.gov)

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Child Care Licensing Regulations: Center Based Child Care and Preschool Programs.

Vermont Proposed Rule: 21E19

AGENCY: Agency of Human Services, Department for Children and Families

CONCISE SUMMARY: Rule 2.7 (Rule Variance) is amended to exempt rules 3.5 (Nondiscriminatory Enrollment), 4.7 (Communicating CBCCPP Policies and Procedures), 6.1.4.3 (Respect for Diversity), and 6.2.5.1 (Quality of Interactions).

FOR FURTHER INFORMATION, CONTACT: Heidi Moreau, Vermont Agency of Human Services, Department for Children & Families, HC 1 South, 280 State Drive, Waterbury, VT 05671- 1080 Tel: 802-595-9639 Email: [heidi.moreau@vermont.gov](mailto:heidi.moreau@vermont.gov) URL: <https://dcf.vermont.gov/cdd/laws-regs>.

FOR COPIES: Christel Michaud, Vermont Agency of Human Services, Department for Children & Families, Child Development Division, NOB1, 280 State Drive, Waterbury, VT 05671-1040 Tel: 802-224-6940 Email: [christel.michaud@vermont.gov](mailto:christel.michaud@vermont.gov).

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Reportable and Communicable Diseases Emergency Rule.

Vermont Proposed Rule: 21E20

AGENCY: Agency of Human Services, Department of Health

CONCISE SUMMARY: The purpose of this rule is to protect the public health through the reporting of communicable diseases and other diseases dangerous to public health. Through this rulemaking, the Department adds COVID-19 to the list of reportable diseases, clarifies how diseases are to be reported to the Department and by whom, and requires demographic information be reported to the Department. The Department anticipates initiating formal rulemaking soon, which will include the proposed changes to this emergency rule.

FOR FURTHER INFORMATION, CONTACT: David Englander, Vermont Department of Health, 108 Cherry Street, Burlington, VT 05401 Tel: 802-863-7280 Fax: 802-951-1275 Email: [ahs.vdhrules@vermont.gov](mailto:ahs.vdhrules@vermont.gov) URL: <http://www.healthvermont.gov/about-us/laws-regulations/public-comment>.

FOR COPIES: Natalie Weill, Vermont Department of Health, 108 Cherry Street, Burlington, VT 05401 Tel: 802-863-7280 Fax: 802-951-1275 Email: [ahs.vdhrules@vermont.gov](mailto:ahs.vdhrules@vermont.gov).

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Rules of the Board of Medical Practice.

Vermont Proposed Rule: 21P034

AGENCY: Agency of Human Services, Department of Health

CONCISE SUMMARY: The proposed changes update existing rules to reflect changes to statute enacted that modified: 1) the qualifications for physician licensure; 2) the Board's powers and duties, and the Board's complaint, investigation, and hearing processes; 3) the requirements for Physician Assistants; and, 4) the provision for reciprocity of licensure from any other state when in good standing. It also makes operational a new option in law for the Board to offer non-disciplinary penalties for administrative infractions in lieu of possible discipline. Last, it provides written procedures for the Board to conduct hearings remotely when needed.

FOR FURTHER INFORMATION, CONTACT: Brendan Atwood, Department of Health, 108 Cherry Street, Burlington, VT 05401 Tel: 802-863-7280 Fax: 802-951-1275 Email [ahs.vdhrules@vermont.gov](mailto:ahs.vdhrules@vermont.gov) URL: <http://www.healthvermont.gov/about-us/laws-regulations/public-comment>.

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Recognized Accrediting Agencies and Relationship with Other Entities.

Vermont Proposed Rule: 21P035

AGENCY: Agency of Education / Vermont Board of Education

CONCISE SUMMARY: In this filing, the State Board first proposes to repeal Rule 7320 effective July 1, 2024. This proposed amendment is an initial step in a larger plan to incorporate all discussion of accrediting agencies directly within the Rule 2200 Series. The Board intends to initiate a separate rulemaking process to amend the 2200 Series, and anticipates that the 2200 amendments will be effective on or before July 1, 2024 – thus rendering Rule 7320 both obsolete and unnecessary at that time. Second, the Board proposes to repeal all other rules within the Rule 7000 Series effective 15 days after the amendment's adoption per 3 V.S.A. § 845 in order to eliminate rules that provide no independent information, but instead cite other statutes and rules.

FOR FURTHER INFORMATION, CONTACT: Donna Russo-Savage, Agency of Education 1 National Life, Davis 5, Montpelier, VT 05620 Tel: 802-828-0110 Fax: 802-828-6430 Email: [Donna.RussoSavage@vermont.gov](mailto:Donna.RussoSavage@vermont.gov) URL: <https://education.vermont.gov/state-board-councils/state-board/rulemaking>.

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FOR COPIES: Emily Simmons, Agency of Education 1 National Life, Davis 5, Montpelier, VT 05620 Tel: 802-828-1518 Fax: 802-828-6430 Email: [Emily.Simmons@vermont.gov](mailto:Emily.Simmons@vermont.gov).

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FOR FURTHER INFORMATION, CONTACT: Donna Russo-Savage, Agency of Education 1 National Life, Davis 5, Montpelier, VT 05620 Tel: 802-828-0110 Fax: 802-828-6430 Email: [Donna.RussoSavage@vermont.gov](mailto:Donna.RussoSavage@vermont.gov) URL: <https://education.vermont.gov/state-board-councils/state-board/rulemaking>.

FOR COPIES: Emily Simmons, Agency of Education 1 National Life, Davis 5, Montpelier, VT 05620 Tel: 802-828-1518 Fax: 802-828-6430 Email: [Emily.Simmons@vermont.gov](mailto:Emily.Simmons@vermont.gov) URL: <https://education.vermont.gov/state-board-councils/state-board/rulemaking>.