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**OFFICE OF THE LIEUTENANT GOVERNOR  
ALASKA**

**MEMORANDUM**

**TO:** Jun Maiquis  
Department of Commerce, Community & Economic Development

**FROM:** April Simpson, Office of the Lieutenant Governor   
465.3509

**DATE:** September 8, 2017

**RE:** Filed Permanent Regulations: State Medical Board

State Medical Board regulations re: physician temporary permits, physician and physician assistant applications, keeping of records, unprofessional conduct, prescription of controlled substances, and telemedicine (12 AAC 40.035; 12 AAC 40.036(f); 12 AAC 40.038(d); 12 AAC 40.045(i); 12 AAC 40.400(d); 12 AAC 40.445(g); 12 AAC 40.940(e); 12 AAC 40.943; 12 AAC 40.967; 12 AAC 40.975)

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Attorney General File:	JU2017200149
Regulation Filed:	9/8/2017
Effective Date:	10/8/2017
Print:	224, January 2018

cc with enclosures: Linda Miller, Department of Law  
Judy Herndon, LexisNexis

ORDER CERTIFYING THE CHANGES TO  
REGULATIONS OF THE STATE MEDICAL BOARD


The attached nine pages of regulations, dealing with physician temporary permits, physician and physician assistant applications, standards of practice for record keeping, unprofessional conduct, prescribing controlled substances, and standards of practice for telemedicine, are hereby certified to be a correct copy of the regulation changes that the State Medical Board adopted at its May 4-5, 2017 meeting, under the authority of AS 08.01.062, AS 08.01.070, AS 08.64.100, AS 08.64.101, AS 08.64.107, AS 08.64.180, AS 08.64.240, AS 08.64.270, AS 08.64.272, AS 08.64.275, AS 08.64.279, AS 08.64.326, AS 08.64.364, and AS 08.64.380 and after compliance with the Administrative Procedure Act (AS 44.62), specifically including notice under AS 44.62.190 and 44.62.200 and opportunity for public comment under AS 44.62.210.

This action is not expected to require an increased appropriation.

On the record, in considering public comments, the State Medical Board paid special attention to the cost to private persons of the regulatory action being taken.


The regulation changes described in this order take effect on the 30th day after they have been filed by the lieutenant governor, as provided in AS 44.62.180.

DATE: May 5, 2017  
Anchorage, Alaska

  
\_\_\_\_\_  
Grant T. Roderer, M.D., President  
State Medical Board

FILING CERTIFICATION

I, Byron Mallott, Lieutenant Governor for the State of Alaska, certify that on September 8, 2017 at 1038a.m., I filed the attached regulations according to the provisions of AS 44.62.040 – 44.62.120.

  
\_\_\_\_\_  
Byron Mallott, Lieutenant Governor

Effective: October 8<sup>th</sup>, 2017

Register: 224, January 2018

**Chapter 40. State Medical Board.**

The introductory language of 12 AAC 40.035(a) is amended to read:

*111 bold/underline "may"}}* → #may#  
(a) A member of the board or its designee, will, in the member's discretion, issue a  
temporary physician permit to an applicant who *111 Conf W,*

...

12 AAC 40.035 is amended by adding a new subsection to read:

(d) A member of the board or its designee may ~~will, in the member's discretion,~~ expedite the  
issuance of a temporary physician permit to an applicant who

(1) meets the requirements of AS 08.64.270; and

(2) has on file with the division

(A) a completed application on a form provided by the department,  
including a photograph of the applicant and the applicant's notarized signature;

(B) a completed authorization for release of records on a form provided by  
the department and signed by the applicant;

payment of  
(C) all required application and licensing fees;

(D) a complete profile and credentials verification documents sent directly  
to the division from the Federation Credentials Verification Service of the Federation of  
State Medical Boards of the United States, Inc.;

(E) verification of passing the licensing examination required under  
12 AAC 40.010(c)(1) or 12 AAC 40.020;

(F) clearance from the federal Drug Enforcement Administration (DEA);

(G) clearance from the Federation of State Medical Boards or the Federation of Podiatric State Medical Boards; and

(H) clearance from the National Practitioner Data Bank; and

(3) has no adverse or derogatory history, including ~~but not limited to:~~

(A) grounds for which the board may impose disciplinary sanctions under AS 08.64.326;

(B) malpractice settlements or payments in excess of \$50,000 individually or \$100,000 in the aggregate;

(C) any criminal charge or conviction, including conviction based on a guilty plea or plea of nolo contendere;

(D) any complaint, investigation, or action, regarding the practice of medicine, in another state or territory of the United States, a province or territory of the armed forces of the Canada, a federal agency, United States military, or any international jurisdiction;

(E) any adverse action taken by a hospital, health care facility, health care entity, residency program or fellowship program. (Eff. 5/18/85, Register 94; am 8/2/86, Register 99; am 4/10/88, Register 106; am 8/17/97, Register 143; am 8/9/2000, Register 155; am 10 / 8 / 2017, Register 224)

**Authority:** AS 08.64.100      AS 08.64.270      AS 08.64.279  
AS 08.64.180

12 AAC 40.036 is amended by adding a new subsection to read:

(f) Notwithstanding (b) of this section, an applicant for a locum tenens permit may submit the credentials verification documents through the Federation Credentials Verification Service

(FCVS) of the Federation of State Medical Boards of the United States, Inc., sent directly to the department from FCVS. (Eff. 5/18/85, Register 94; am 4/10/88, Register 106; am 8/17/97, Register 143; am 8/9/2000, Register 155; am 6/15/2001, Register 158; am 9/9/2010, Register 195; am 10 / 8 / 2017, Register 224)

**Authority:** AS 08.64.100 AS 08.64.275 AS 08.64.279  
AS 08.64.180

12 AAC 40.038 is amended by adding a new subsection to read:

(d) Notwithstanding (b) of this section, an applicant for a residency ~~resident~~ permit may submit the credentials verification documents through the Federation Credentials Verification Service (FCVS) of the Federation of State Medical Boards of the United States, Inc., sent directly to the department from FCVS. (Eff. 8/2/86, Register 99; am 8/20/87, Register 103; am 4/10/88, Register 106; am 8/17/97, Register 143; am 12/16/99, Register 152; am 8/9/2000, Register 155; am 10/14/2006, Register 180; am 9/9/2010, Register 195; am 10 / 8 / 2017, Register 224)

**Authority:** AS 08.64.100 AS 08.64.272 AS 08.64.279

12 AAC 40.045 is amended by adding a new subsection to read:

(i) Notwithstanding (d) of this section, an applicant for a courtesy license may submit the credentials verification documents through the Federation Credentials Verification Service (FCVS) of the Federation of State Medical Boards of the United States, Inc., sent directly to the department from FCVS. (Eff. 5/1/94, Register 130; am 8/9/95, Register 135; am 12/18/2001, Register 160; am 10 / 8 / 2017, Register 224)

**Authority:** AS 08.01.062 AS 08.64.100 AS 08.64.240

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12 AAC 40.400 is amended by adding a new subsection to read:

(d)  
(e) Notwithstanding (b) of this section, an applicant for a physician assistant license ~~licensure by credentials~~ may submit the credentials verification documents through the Federation Credentials Verification Service (FCVS) of the Federation of State Medical Boards of the United States, Inc., sent directly to the department from FCVS. (Eff. 1/13/80, Register 73; am 7/4/84, Register 90; am 5/18/85, Register 94; am 8/20/87, Register 103; am 3/12/89, Register 109; am 5/1/94, Register 130; am 6/28/97, Register 142; am 8/9/2000, Register 155; am 6/15/2001, Register 158; am 9/1/2007, Register 183; am 5/8/2013, Register 206; am 10 / 8 / 2017, Register 224)

**Authority:** AS 08.64.100 AS 08.64.107

12 AAC 40.445 is amended by adding a new subsection to read:

a graduate physician assistant license  
(g) Notwithstanding (b) of this section, an applicant for ~~licensure by credentials~~ may submit the credentials verification documents through the Federation Credentials Verification Service (FCVS) of the Federation of State Medical Boards of the United States, Inc., sent directly to the department from FCVS. (Eff. 3/12/89, Register 109; am 6/28/97, Register 142; am 9/1/2007, Register 183; am 10 / 8 / 2017, Register 224)

**Authority:** AS 08.64.100 AS 08.64.107

12 AAC 40.940 is amended by adding a new subsection to read:

(e) The patient records for a physician practicing under AS 08.64.364 must comply with the requirements of this section and include

(1) the physical location of the patient and the physician when the patient care was provided;

(2) a description of the method of the communication between the physician and patient;

(3) the name, location, and phone number, state of licensure and license number of the physician or other licensed health care provider available to provide follow-up care; and

(4) if the prescribing physician is not the patient's primary care provider, documentation of the patient's consent to sending a copy of all records of the encounter to the patient's primary care provider, and if the patient consents, confirmation that the records were sent to the patient's primary care provider. (Eff. 6/15/2001, Register 158; am 10 / 8 / 2017, Register 224)

Authority: AS 08.64.100

AS 08.64.107

AS 08.64.364

12 AAC 40 is amended by adding a new section to read:

**12 AAC 40.943. Standards of practice for telemedicine.** The guiding principles for telemedicine practice adopted by the American Medical Association (AMA) <sup>in</sup> ~~in the AMA Council~~ <sup>Cs Report 7 of the</sup> ~~on Medical Service Reports, Coverage of and Payment for Telemedicine~~ <sup>Cs dated</sup> ~~(adopted 2014 Annual Meeting)~~ <sup>2</sup> and the *Model Policy for the Appropriate Use of Telemedicine Technologies in the Practice of Medicine* of the Federation of State Medical Boards (FSMB) <sup>dated</sup> ~~(adopted April 2014)~~ <sup>7</sup> are adopted by reference as the standards of practice when providing treatment, rendering a diagnosis, prescribing, dispensing, or administering a prescription or controlled substance without first conducting an in-person physical examination under AS 08.64.364. (Eff.

10 / 8 / 2017, Register 224)

Authority: AS 08.01.070

AS 08.64.101

AS 08.64.364

AS 08.64.100

*(ital //)* → Report 7 of the  
**Editor's note:** A copy of the ~~American Medical Association (AMA)~~ Council on Medical  
Service Reports, Coverage of and Payment for Telemedicine (adopted 2014 Annual Meeting), Q  
CA-14 adopted by reference in 12 AAC 40.943, may be obtain Ced ← *(do not italicize the comma)*  
AMA Plaza, 330 N. Wabash Ave. Suite 39300, Chicago, IL 60611-5885, or website at on the association's Internet  
<https://www.ama-assn.org/about-us/council-medical-service-reports>. A copy of the ~~Federation of~~  
~~State Medical Boards (FSMB)~~ Model Policy for the Appropriate Use of Telemedicine  
Technologies in the Practice of Medicine (adopted April 2014), adopted by reference in 12 AAC  
*(do not italicize the comma)* 40.943, may be obtained from the Federation of State Medical Boards, 400 Fuller Wiser Road,  
on the Federation's Internet Euless, TX 76039, or website at [https://www.fsmb.org/policy/advocacy-policy/policy-](https://www.fsmb.org/policy/advocacy-policy/policy-documents)  
documents.

The introductory language of 12 AAC 40.967(29) is amended to read:  
*(bold/underline //)* → for  
(29) **if a physician assistant**, prescribing, dispensing, or furnishing a prescription  
medication to a person without first conducting a physical examination of that person, unless the  
licensee has a [PATIENT-PHYSICIAN OR] patient-physician assistant relationship with the  
person; this paragraph does not apply to prescriptions written or medications issued

...

12 AAC 40.967(32) is amended to read:

(32) any conduct described in (1) – (35) (1) - [(31)] of this section that occurred in  
*(bold/underline //)* another licensing jurisdiction and is related to the applicant's or licensee's qualifications to  
practice; [.]

12 AAC 40.967 is amended by adding new paragraphs to read:

(33) permitting patient care that includes administering a botulinum toxin or dermal filler, autotransplanting ~~autotransplantation of~~ biological materials, or treating with chemical peels below the dermal layer, or hot lasers, by a person who is not an appropriate health care provider trained and licensed under AS 08 to perform the treatment;

of a licensee who has a federal Drug Enforcement Administration (DEA) registration number

(34) failure to register with the controlled substance prescription database

established under AS 17.30.200, by a licensee who has a Federal Drug Enforcement

Administration registration number;

of a licensee or licensee's designee to review

(35) failure to check the controlled substance prescription database ~~established~~

under AS 17.30.200, by a licensee or licensee's designee when prescribing, dispensing, or administering a controlled substance designated schedule II or III under federal law to a patient.

(Eff. 3/16/2000, Register 153; am 9/5/2002, Register 163; am 4/2/2004, Register 169; am

10/14/2006, Register 180; am 7/25/2008, Register 187; am 9/9/2010, Register 195; am 5/8/2013,

Register 206; am 8/24/2016, Register 219; am 10/9/2017, Register 224)

Authority: AS 08.01.070

AS 08.64.101

AS 08.64.364

AS 08.64.100

AS 08.64.326

AS 08.64.380

AS 17.30.200

12 AAC 40.975 is repealed and readopted to read:

**12 AAC 40.975. Prescribing controlled substances.** (a) When prescribing a drug that is 12 AAC 40.975(b) and a controlled substance, ~~as defined in AS 11.71.900~~ an individual licensed under this chapter (c). ) shall create and maintain a complete, clear, and legible written record of care that includes

(1) a patient history and evaluation sufficient to support a diagnosis;

(2) a diagnosis and treatment plan for the diagnosis;

(3) a plan for monitoring the patient for the primary condition that necessitates the drug, side effects of the drug, and results of the drug, as appropriate;

(4) a record of each drug prescribed, administered, or dispensed, including the type of drug, dose, and any authorized refills.

~~(b) When prescribing a drug that is a controlled substance as defined in AS 11.71.900, an individual licensed under this chapter shall check the controlled substance prescription database established under AS 17.30.200, or the licensee's designee shall check the database and give the information to the licensee, before the licensee initially dispenses, prescribes, or administers a controlled substance designated schedule II or III under federal law to a patient, and at least once every 30 days for up to 90 days, and at least once every three months if a course of treatment continues for more than 90 days. This requirement shall not apply if~~

~~(1) the controlled substance is dispensed or prescribed to a patient currently receiving treatment in a licensed health care facility, and that prescription is non-refillable;~~

~~(2) the controlled substance is dispensed or prescribed to a patient currently receiving treatment at the scene of an emergency or in an ambulance, and that prescription is non-refillable; in this sub-paragraph, "ambulance" has the meaning given in AS 18.08.200;~~

~~(3) the controlled substance is dispensed or prescribed to a patient currently receiving treatment in an emergency room in a licensed health care facility, and that prescription is non-refillable;~~

~~(4) the controlled substance is dispensed or prescribed to a patient immediately before, during, or within the first 48 hours of undergoing a medical or surgical procedure in a licensed health care facility, and that prescription is non-refillable;~~

~~(5) the controlled substance is dispensed or prescribed to a patient currently~~

Withdrawn. ACJ 9/5/2017

~~receiving care in hospice or a nursing home that has an in-house pharmacy;~~

(6) the quantity of the controlled substance prescribed and dispensed does not exceed an amount which is adequate for a single three-day treatment period, the prescription does not allow a refill, and no subsequent prescriptions are written or dispensed for the next 15 days;

(7) the controlled substance is directly administered to the patient by the prescriber or the prescriber's designee authorized to administer a controlled substance;

(8) it is not possible to check the controlled substance prescription database in a timely manner due to an emergency situation, and the check is made when the emergency situation is resolved; or

(9) the prescription controlled substance prescription database is not operational due to temporary technological or electrical failure or natural disaster.

(c) A licensee treating a patient with a prescription for a controlled substance that was initially written at least 90 days before \_\_\_/\_\_\_/\_\_\_ (fill in effective date of regulation) shall check the controlled substance prescription database established under AS 17.30.200 at least once every three months for the duration of the prescription. (Eff. 6/28/97, Register 142; am

10/8/2017, Register 224)

**Authority:** AS 08.64.100 AS 08.64.107 AS 08.64.380