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OFFICE OF THE LIEUTENANT GOVERNOR
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MEMORANDUM

TO: Amy Demboski
Department of Commerce Community and Economic Development

FROM: April Simpson, Office of the Lieutenant Governor
465.4081

DATE: February 4, 2020

RE: Filed Permanent Regulations: Board of Nursing

Board of Nursing regulations re: application review procedures, reporting to the prescription drug monitoring program (PDMP), unprofessional conduct, and administration of herbal supplements (12 AAC 44.319(a); 12 AAC 44.321; 12 AAC 44.446; 12 AAC 44.770; 12 AAC 44.945; 12 AAC 44.990)

Attorney General File:	2019200596
Regulation Filed:	2/4/2020
Effective Date:	3/5/2020
Print:	233, April 2020

cc with enclosures: Harry Hale, Department of Law
Judy Herndon, LexisNexis
Jun Maiquis, Regulations Specialist

ORDER CERTIFYING THE CHANGES TO
REGULATIONS OF THE BOARD OF NURSING

The attached four pages of regulations, dealing with checklists used for review of applications, loss of prescriptive authority, unprofessional conduct, and administration of herbal or non-herbal nutritional supplement, are hereby certified to be a correct copy of the regulation changes that the Board of Nursing adopted at its November 13-15, 2019 meeting, under the authority of AS 08.68.100, 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 Board of Nursing 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: 12/23/2019
Anchorage, Alaska

Marianne Murray, Executive Administrator
Board of Nursing

FILING CERTIFICATION

I, Kevin Meyer, Lieutenant Governor for the State of Alaska, certify that on Febr. 4th, 2020 at 1:39 P.m., I filed the attached regulations according to the provisions of AS 44.62.040 – 44.62.120.

Kevin Meyer, Lieutenant Governor

Effective: March 5, 2020.

Register: 233, April 2020.

12 AAC 44.319 (a) is amended to read:
(a) If submission of fingerprint information is required by 12 AAC 44.290 - 12 AAC 44.320 [12 AAC 44.290 - 12 AAC 44.321], an applicant shall submit the applicant's fingerprints and other information required by the Department of Public Safety to obtain state and national criminal justice information under AS 12.62 and AS 12.64.
(Eff. 6/16/2002, Register 162; am 7/30/2002, Register 163; am 10/15/2004, Register 172; am 3/4/2007, Register 181; am 12/23/2009, Register 192; am 5/16/2018, Register 226; am 3/5/2020, Register 233)
Authority: AS 08.68.100 AS 08.68.270

Chapter 44. Board of Nursing.

12 AAC 44.321 is repealed:

12 AAC 44.321. Review of applications. Repealed. (Eff. 10/8/95, Register 136; am 4/27/97, Register 142; am 6/16/2002, Register 162; am 7/30/2002, Register 163; am 5/2/2004, Register 170; am 2/9/2007, Register 181; am 3/4/2007, Register 181; am 3/28/2008, Register 185; am 12/27/2012, Register 204; am 5/16/2018, Register 226; am 10/20/2018, Register 228; repealed 3/5/2020, Register 233)

(Publisher: Please delete editor's notes that follow 12 AAC 44.321.)))

12 AAC 44 is amended by adding a new section ~~to Article 4~~ to read:

12 AAC 44.446. Loss of prescriptive authority. ~~Investigations~~ The chief investigator for the division shall notify the federal Drug Enforcement Administration (DEA) and the prescription drug monitoring program (PDMP) of any final decision revoking or suspending prescriptive authority for a person licensed under AS 08.68. ~~Investigations will~~ The chief investigator shall notify the board's executive administrator when notification to the DEA and PDMP has been completed. (Eff. 3/5/2020, Register 233)

Authority: AS 08.68.100

12 AAC 44.770 is amended by adding new paragraphs to read:

(40) failure to provide copies of complete patient records in the licensee's custody and control within 30 days after receipt of a written request from the patient or the patient's guardian;

(41) failure to notify the board of the location of patient records within 30 days after a licensee has retired or closed a practice;

(42) failure to ~~give records to the patient, transfer the patient's records to a new medical provider, securely store in compliance with HIPAA the patient records for seven years from the closing of the practitioner's office; or, after seven years of storing the records, failure to properly destroy all of the patient records in compliance with HIPAA.~~ maintain patient documentation in compliance with 45 C.F.R. 164.530(j) (Health Insurance Privacy and Accountability Act (HIPAA)). (Eff. 4/27/83, Register 86; am 11/7/87, Register 104; am 4/9/94, Register 130; am 11/10/2002, Register 164; am 7/22/2004, Register 171; am 10/15/2004, Register 172; am 5/18/2006, Register 178; am 11/19/2008, Register 188; am 12/23/2009, Register 192; am 3/19/2014, Register 209; am 5/16/2018, Register 226; am 3/5/2020, Register 233)

Authority: AS 08.68.100

12 AAC 44.945 is amended to read:

12 AAC 44.945. Administration of herbal or [A] non-herbal nutritional supplement.

(a) A nurse licensed under AS 08.68 may administer ~~a~~ an **herbal or** [A] non-herbal nutritional supplement to a patient if

(1) the patient's health care provider has ordered that ~~a~~ an **herbal or** [THE] non-herbal nutritional supplement ~~to~~ be administered to the patient;

(2) the patient or the patient's representative has requested that the nurse administer ~~a~~ an **herbal or** [THE] non-herbal nutritional supplement to the patient;

(3) the nurse administering the **herbal or** non-herbal nutritional supplement knows the actions, possible side effects, and possible interactions of the [NON-HERBAL NUTRITIONAL] supplement with food, medications, or other substances;

(4) the use of the **herbal or** non-herbal nutritional supplement **and ~~rationale~~** indications are [IS] included as part of the nursing care plan for the patient;

(5) the **herbal or** non-herbal nutritional supplement was commercially manufactured and the container of the [NON-HERBAL] nutritional supplement provided for administration to the patient was provided unopened with the manufacturer's seal intact **and administered ~~prior to~~ before the expiration date**; ~~[AND]~~ **and** (« retain »)

(6) **~~an in-house~~** ~~[A]~~ pharmacist **~~or consulting pharmacist~~** has reviewed all medications taken by the patient **including any herbal or** [AND THE] non-herbal nutritional **supplements** [SUPPLEMENT] ordered by the patient's health care provider **or requested by the patient or patient's representative** for possible adverse effects or interactions with food, medications, or other substances; **~~and~~** (« retain the period »)

~~(7) the product manufacturer meets or exceed the good manufacturing practices (GMP) guidelines, with documentation available in the facility, or the product was purchased or supplied from a licensed pharmacy.~~ Withdrawn 1/27/2020

(b) Repealed 8/10/2016.

(c) A nurse licensed under AS 08.68 may not administer to a patient ~~a~~ **or** **herbal or non-herbal** ~~[A]~~ nutritional supplement that

~~(1) [CONTAINS ONE OR MORE HERBS; OR~~

~~(2)]~~ was compounded for the patient rather than commercially manufactured**; or**

(2) is a controlled substance ~~I - V as defined by the U.S. Drug Enforcement Administration.~~ (under state or federal law.)

(d) This section does not apply to United States Food and Drug Administration (FDA) regulated vitamins and minerals. A nurse licensed under AS 08.68 may administer FDA-regulated vitamins and minerals to a patient in the manufacturer's recommended dosage or as ordered by the patient's health care provider.

(e) As used in this section,

(1) "administer" means to provide a nutritional supplement to a patient for ingestion by the patient;

(2) "compounded" means the preparation, mixing, assembling, packaging, or labeling of a nutritional supplement;

(3) "health care provider" includes a licensed

(A) advanced practice registered nurse;

(B) doctor of medicine;

(C) doctor of osteopathy;

(D) physician assistant; and

(E) dentist;

(4) "herb" means a plant grown for its health or medicinal properties; "herb" includes plant parts and extracts;

(5) "non-herbal nutritional supplement" has the meaning given for a "dietary supplement" in 21 U.S.C. 321(ff) (sec. 3(a) of the Dietary Supplement Health and Education Act of 1994) [as] revised as of March 1, 2007, adopted by reference [,] EXCEPT THAT IT DOES NOT INCLUDE A DIETARY SUPPLEMENT THAT CONTAINS ONE OR MORE HERBS;

(6) "nutritional supplement" has the meaning given for a "dietary supplement" in 21 U.S.C. 321(ff), (sec. 3(a) of the Dietary Supplement Health and Education Act of 1994), revised as of March 1, 2007, adopted by reference. (Eff. 8/30/2007, Register 183; am 11/19/2008, Register 188; am 5/7/2010, Register 194; am 8/10/2016, Register 219; am 5/16/2018, Register 226; am 3/5/2020, Register 233)

Authority: AS 08.68.100