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**OFFICE OF THE LIEUTENANT GOVERNOR
ALASKA**

MEMORANDUM

TO: Sara Chambers, Department of Commerce, Community and Economic Development

FROM: April Simpson, Office of the Lieutenant Governor
465.4081

A handwritten signature in blue ink, likely belonging to April Simpson, is written over the "FROM:" line.

DATE: December 6, 2023

RE: Filed Permanent Regulations: Board of Nursing

Board of Nursing regulations re: Disciplinary Guidelines and Standards of Practice for
Telehealth (12 AAC 44.720, .925)

Attorney General File:	2023200075
Regulation Filed:	12/6/2023
Effective Date:	1/5/2024
Print:	249, April 2024

cc with enclosures: Colleen Bailey, Department of Law
Judy Herndon, LexisNexis
Sylvan Robb, Division Director
Alison Osborne, Regulations Specialist
Stefanie Davis, Regulations Specialist



THE STATE
of **ALASKA**
GOVERNOR MIKE DUNLEAVY

Department of Law

CIVIL DIVISION

P.O. Box 110300
Juneau, Alaska 99811
Main: 907.465.3600
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December 5, 2023

The Honorable Nancy Dahlstrom
Lieutenant Governor
State of Alaska
P.O. Box 110015
Juneau, AK 99811-0015

Re: *12 AAC 44.720, .925: Board of Nursing - Disciplinary Guidelines and Standards of Practice for Telehealth*

Our file: 2023200075

Dear Lieutenant Governor Dahlstrom:

The Department of Law has reviewed the attached regulations of the Board of Nursing against the statutory standards of the Administrative Procedure Act. Based upon our review, we find no legal problems. This letter constitutes the written statement of approval under AS 44.62.060(b) and (c) that authorizes your office to file the attached regulations. The regulations were adopted by the Board of Nursing after the close of the public comment period.

The regulations amend provisions under 12 AAC 44 to clarify that the Board of Nursing may discipline a licensee by assessing a civil fine in accordance with the centralized licensing statutes (AS 08.01) and update the standards of practice for advanced practice registered nurses for health care services provided through telehealth.

Both the August 24, 2023 public notice and the November 9, 2023 order certifying the changes to regulations state that this action is not expected to require an increased appropriation. Therefore, a fiscal note under AS 44.62.060 is not required.

No technical corrections were necessary to conform the regulations in accordance with AS 44.62.060.

Sincerely,

TREG TAYLOR
ATTORNEY GENERAL

By: **Rebecca C. Polizzotto**
Rebecca C. Polizzotto
Chief Assistant Attorney General
Legislation, Regulations, and
Legislative Research Section

Digitally signed by
Rebecca C. Polizzotto
Date: 2023.12.05
08:45:03 -09'00'

RCP/BWS

CC w/enclosure: Stefanie Davis
Department of Commerce, Community and Economic Development

Harriet Milks, Assistant Attorney General
Department of Law

Brad Sharp, Assistant Attorney General
Department of Law

ORDER CERTIFYING THE CHANGES TO
REGULATIONS OF THE BOARD OF NURSING

The attached three pages of regulations, dealing with updating regulations regarding advanced practice nurse practitioner disciplinary guidelines and standards of practice for telehealth, are certified to be a correct copy of the regulation changes that the Board of Nursing adopted at its November 8, 2023 meeting, under the authority of AS 08.68.100, and AS 08.68.270, 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: 11/9/2023

DocuSigned by:
Patty Wolf
41C965A44F5A429

Patty Wolf, Executive Administrator
Alaska Board of Nursing

April Gimpson for

FILING CERTIFICATION

I, Nancy Dahlstrom, Lieutenant Governor for the State of Alaska, certify that _____ on _____
December 6, 2023 at 1:21 P.m., I filed the attached regulations according to the provisions of AS 44.62.040 – 44.62.120.

for *April Gimpson*

Nancy Dahlstrom, Lieutenant Governor

Effective: January 5, 2024

Register: 249, April 2024

FOR DELEGATION OF THE LIEUTENANT GOVERNOR'S AUTHORITY

I, NANCY DAHLSTROM, LIEUTENANT GOVERNOR OF THE STATE OF ALASKA, designate the following state employees to perform the Administrative Procedures Act filing functions of the Office of the Lieutenant Governor:

April Simpson, Regulations and Initiatives Specialist

IN TESTIMONY WHEREOF, I have signed and affixed the Seal of the State of Alaska, in Juneau, on May 15th, 2023.



A handwritten signature in blue ink, reading "Nancy Dahlstrom", is written over a horizontal dotted line.

**NANCY DAHLSTROM
LIEUTENANT GOVERNOR**

The introductory language of 12 AAC 44.720(a) is amended to read:

12 AAC 44.720. Disciplinary guidelines. (a) The board **may** [WILL, IN ITS DISCRETION,] revoke a license if the licensee

...

12 AAC 44.720(a)(9) is amended to read:

(9) **is** [IF] professionally incompetent, if the incompetence results in risk of injury to a client.

The introductory language of 12 AAC 44.720(b) is amended to read:

(b) The board **may** [WILL, IN ITS DISCRETION,] suspend a license for up to two years, followed by probation of not less than two years, if the licensee

...

The introductory language of 12 AAC 44.720(c) is amended to read:

(c) The board **may** [WILL, IN ITS DISCRETION,] suspend a license for up to one year, followed by probation for not more than one year, if the licensee

...

12 AAC 44.720 is amended by adding a new subsection to read:

(e) The board may impose a civil fine not to exceed the amount of \$5,000 for each finding the board makes of a cause for discipline under this section. (Eff. 8/6/87, Register 103; am 1 / 5 / 2024, Register 249)

Authority: AS 08.01.075 AS 08.68.100 AS 08.68.275
[AS 08.01.975] AS 08.68.270

12 AAC 44.925 is repealed and readopted to read:

12 AAC 44.925. Standards of practice for telehealth. (a) In accordance with the American Association of Nurse Practitioners, *Position Statement: Telehealth*, dated 2022, adopted by reference, an APRN shall, for the purpose of rendering a diagnosis, providing treatment, or prescribing, dispensing, or administering a prescription drug to a person without conducting a physical examination under AS 08.68.710, provide the same standard of care to a patient who is at a different location as would be provided to that patient in person.

(b) An APRN may practice telehealth if

- (1) the APRN is licensed by the board; and
- (2) the APRN or another licensed health care provider is available to provide

follow-up care.

(c) For a telehealth encounter, an APRN must complete and document

- (1) the patient's informed consent to use telehealth technologies;
- (2) a clinical history and review of systems establishing diagnoses and identifying

conditions and contraindications to recommended treatment;

(3) a plan of care that lists all recommendations and prescriptions issued by electronic means;

- (4) the patient and provider locations at the time of the telehealth visit; and
- (5) the provider-patient relationship prior to prescribing.

(d) An APRN practicing telehealth shall comply with P.L. 104 - 191 (Health Insurance

Portability and Accountability Act of 1996 (HIPAA)) and medical record retention rules.

Transmissions, including patient electronic mail, prescriptions, and laboratory results must be secure within existing technology, including the use of password-protected, encrypted electronic prescriptions or other reliable authentication techniques.

(e) In this section, a “provider-patient relationship” is established when there is an in-person health examination or examination by telehealth technology of the patient by the APRN or another licensed health care provider and the patient record is available to the treating APRN. (Eff. 5/7/2020, Register 234; am 5/11/2021, Register 238; am 1 / 5 / 2024, Register 249)

Authority: AS 08.68.100 **AS 08.68.710**

Editor’s note: A copy of the *Position Statement: Telehealth*, published by the American Association of Nurse Practitioners, dated 2022, adopted by reference under 12 AAC 44.925, may be obtained from the American Association of Nurse Practitioners Internet website at <https://storage.aanp.org/www/documents/advocacy/position-papers/Telehealth.pdf>.