

Steve Sisolak
Governor

Richard Whitley, MS
Director



**DEPARTMENT OF
HEALTH AND HUMAN SERVICES**
DIVISION OF PUBLIC AND BEHAVIORAL HEALTH
Helping people. It's who we are and what we do.



Lisa Sherych
Administrator

Ihsan Azzam,
Ph.D., M.D.
Chief Medical Officer

NOTICE OF PUBLIC HEARING

JEREMY MANCUSO IS REQUESTING A VARIANCE, #732, FROM THE NEVADA STATE BOARD OF HEALTH REGULATIONS.

NOTICE IS HEREBY GIVEN that JEREMY MANCUSO has requested a variance from Nevada Administrative Code (NAC) Chapter 392, as amended by LCB File No. R046-20AP.

A public hearing will be conducted on June 3rd, 2022, at 9:00 am by the Nevada State Board of Health to consider this request. This meeting will be held online, by phone, and at two physical locations:

Meeting Locations:

- Southern Nevada Health District (SNHD)
Red Rock Trail Rooms A and B
280 S. Decatur Boulevard; Las Vegas, Nevada 89107
- Nevada Division of Public and Behavioral Health (DPBH)
Hearing Room No. 303, 3rd Floor
4150 Technology Way; Carson City, Nevada 89706

Join from computer using the Zoom meeting link:

<https://zoom.us/j/94244271039?pwd=V0s1UW5aKy9pdlVTNzIzR0xLODU4dz09>

Online Conference ID Number: 942 4427 1039

Passcode: 479010

Join by Phone:

1-669-900-9128 US (San Jose)

Phone Conference ID Number: 942 4427 1039

Passcode: 479010

JEREMY MANCUSO is requesting a variance from [LCB File No. R046-20AP](#)

The authority of the State Board of Health to consider and grant a variance from the requirements of a regulation is set forth at NRS 439.200 and NAC 439.200 – 439.280.

Persons wishing to comment upon the proposed variance may appear at the scheduled public hearing or may submit written testimony at least five days before the scheduled hearing to:

Secretary, State Board of Health
Division of Public and Behavioral Health
4150 Technology Way, Suite 300
Carson City, NV 89706

Anyone wishing to testify for more than five minutes on the proposed variance must petition the Board of Health at the above address. Petitions shall contain the following: 1) a concise statement of the subject(s) on which the petitioner will present testimony; 2) the estimated time for the petitioner's presentation.

This notice has also been posted at the following locations:

DIVISION OF PUBLIC AND BEHAVIORAL HEALTH, 4150 TECHNOLOGY WAY, CARSON CITY, NV

DIVISION OF PUBLIC AND BEHAVIORAL HEALTH WEBSITE:

<http://dpbh.nv.gov/Boards/BOH/Meetings/Meetings/>

**APPROVED REGULATION OF THE
STATE BOARD OF HEALTH**

LCB File No. R046-20

Filed December 29, 2020

A REGULATION relating to public health; revising provisions concerning the submission of certain forms relating to immunization exemptions; authorizing an audit of medical exemptions from immunization in certain circumstances; requiring a child to receive certain immunizations to enroll in public or private school; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law provides broad authority to the State Board of Health to adopt regulations relating to public health, including to control communicable diseases. (NRS 439.200, 441A.120) Existing law requires children and students to receive various immunizations in order to enroll in school or child care facilities or to be admitted to accommodation facilities. (NRS 392.435, 394.192, 432A.230, 432A.235; NAC 441A.755) Existing law provides an exemption to immunization requirements for religious beliefs and medical conditions if a written statement provided to the school or child care facility indicates such religious beliefs or medical conditions. (NRS 392.437, 392.439, 394.193, 394.194, 432A.240, 432A.250; NAC 441A.755)

Section 2 of this regulation requires that a written statement indicating that the religious beliefs of the parents or guardian of a child prohibit immunization be submitted to the board of trustees of a school district or governing body of a charter school: (1) annually, according to the enrollment schedule of the school; and (2) on a form provided by the Division of Public and Behavioral Health of the Department of Health and Human Services. **Sections 7, 13 and 16** of this regulation impose similar requirements for children enrolled in private schools, children admitted to child care facilities and accommodation facilities and students admitted to attend a university, respectively. **Section 3** of this regulation requires that a written statement indicating that the medical condition of a child prohibits immunization be submitted to the board of trustees of the school district or governing body of the charter school, as applicable, on a form provided by the Division. **Sections 8, 14 and 16** of this regulation impose similar requirements for children enrolled in private schools, children admitted to child care facilities and accommodation facilities and students admitted to attend a university, respectively.

Section 4, 9 and 15 of this regulation authorizes a local health officer to audit medical exemptions granted by a public school, private school or child care facility or accommodation facility, respectively, in certain circumstances.

Existing regulations list the communicable diseases which a child must be immunized against before attending a public or private school. (NAC 392.105, 394.250) **Sections 5 and 11** of this

regulation prohibit a child from enrolling in grade 12 in a public or private school, respectively, after June 30, 2022, unless the child has received a dose of vaccine for *Neisseria meningitidis* after reaching 16 years of age. **Section 17** of this regulation makes all other provisions of this regulation effective on July 1, 2021.

Section 1. Chapter 392 of NAC is hereby amended by adding thereto the provisions set forth as sections 2, 3 and 4 of this regulation.

Sec. 2. *The written statement required pursuant to NRS 392.437 must be submitted to the board of trustees of a school district or the governing body of a charter school in which a child who has not been immunized pursuant to NRS 392.435 has been accepted for enrollment:*

1. Annually, according to the annual enrollment schedule of the school district or charter school; and

2. On a form provided by the Division of Public and Behavioral Health of the Department of Health and Human Services.

Sec. 3. *The written statement required pursuant to NRS 392.439 must be submitted to the board of trustees of a school district or governing body of a charter school in which a child who has a medical condition that will not permit the child to be immunized to the extent required by NRS 392.435 has been accepted for enrollment on a form provided by the Division of Public and Behavioral Health of the Department of Health and Human Services.*

Sec. 4. *A local health officer may conduct an audit of medical exemptions granted pursuant to NRS 392.439 in the jurisdiction of the local health officer if:*

- 1. The reported immunization rate of a school falls below 95 percent;*
- 2. A school district fails to report immunization data annually pursuant to NRS 392.435;*
- 3. The rate of medical exemptions granted by a school is higher than the average rate of medical exemptions granted by public schools in this State, as determined by the Division of Public and Behavioral Health of the Department of Health and Human Services or from data*

available from the National Immunization Surveys conducted by the Centers for Disease Control and Prevention, or if such a survey or organization ceases to exist, an equivalent federal source; or

4. The local health officer determines such an audit is necessary to protect public health on a case-by-case basis.

Sec. 5. NAC 392.105 is hereby amended to read as follows:

392.105 1. The State Board of Health hereby declares the diseases of:

- (a) Mumps;
- (b) Hepatitis A;
- (c) Hepatitis B;
- (d) Varicella;
- (e) Bordetella pertussis if a child is 6 years of age or older; and
- (f) *Neisseria meningitidis*,

↳ to be communicable diseases.

2. Unless excused because of religious belief or medical condition, a child may not be enrolled in a public school in this State unless the child has been immunized against the mumps.

3. Except as otherwise provided in subsection ~~6.1~~ 7, unless excused because of religious belief or medical condition, a child may not be enrolled in a public school in this State:

(a) After June 30, 2002, unless the child has been immunized against hepatitis A and hepatitis B; and

(b) After June 30, 2003, unless the child has been immunized against varicella.

4. Unless excused because of religious belief or medical condition, a child may not be enrolled in grade 7 in a public school in this State after June 30, 2008, unless the child has been

immunized against Bordetella pertussis. To satisfy the requirements of this subsection, a child must receive at least one dose of a vaccine against Bordetella pertussis after he or she obtained 10 years of age.

5. Except as otherwise provided in subsection ~~6.1~~ 7, unless excused because of religious belief or medical condition, a child may not be enrolled in grade 7 in a public school in this State after June 30, 2017, unless the child has been immunized against *Neisseria meningitidis* after he or she obtained 10 years of age.

6. *Unless excused because of religious belief or medical condition, a child may not be enrolled in grade 12 in a public school in this State after June 30, 2022, unless the child has received at least one dose of a vaccine protecting against Neisseria meningitidis after he or she obtained 16 years of age.*

7. The provisions of:

(a) Paragraph (a) of subsection 3 do not apply to a child who is enrolled in a public school in this State before July 1, 2002.

(b) Paragraph (b) of subsection 3 do not apply to a child who is enrolled in a public school in this State before July 1, 2003.

(c) Subsection 5 do not apply to a child who is enrolled in a public school in this State before July 1, 2009.

Sec. 6. Chapter 394 of NAC is hereby amended by adding thereto the provisions set forth as sections 7, 8 and 9 of this regulation.

Sec. 7. *The written statement required pursuant to NRS 394.193 must be submitted to the governing body of a private school in which a child who has not been immunized pursuant to NRS 394.192 has been accepted for enrollment:*

- 1. Annually, according to the annual enrollment schedule of the private school; and*
- 2. On a form provided by the Division of Public and Behavioral Health of the Department of Health and Human Services.*

Sec. 8. The written statement required pursuant to NRS 394.194 must be submitted to the governing body of a private school in which a child who has a medical condition that will not permit the child to be immunized to the extent required by NRS 394.192 has been accepted for enrollment on a form provided by the Division of Public and Behavioral Health of the Department of Health and Human Services.

Sec. 9. A local health officer may conduct an audit of medical exemptions granted pursuant to NRS 394.194 in the jurisdiction of the local health officer if:

- 1. The reported immunization rate of a private school falls below 95 percent;*
- 2. A private school fails to report immunization data annually pursuant to NRS 394.192;*
- 3. The rate of medical exemptions granted by a private school is higher than the average rate of medical exemptions granted by public schools in this State, as determined by the Division of Public and Behavioral Health of the Department of Health and Human Services or from data available from the National Immunization Surveys conducted by the Centers for Disease Control and Prevention, or if such a survey or organization ceases to exist, an equivalent federal source; or*
- 4. The local health officer determines such an audit is necessary to protect public health on a case-by-case basis.*

Sec. 10. NAC 394.025 is hereby amended to read as follows:

394.025 1. An applicant that is not accredited by AdvancED or its successor organization, or any affiliate thereof, shall comply with the provisions of NAC 394.020, 394.030 to 394.180, inclusive, and 394.250 ~~H~~ *and sections 7, 8 and 9 of this regulation.*

2. An applicant that is accredited by AdvancED or its successor organization, or any affiliate thereof, shall comply with the provisions of NAC 394.020 and 394.200 to 394.250, inclusive ~~H~~, *and sections 7, 8 and 9 of this regulation.*

Sec. 11. NAC 394.250 is hereby amended to read as follows:

394.250 1. The State Board of Health hereby declares the diseases of:

- (a) Mumps;
- (b) Hepatitis A;
- (c) Hepatitis B;
- (d) Varicella;
- (e) Bordetella pertussis if a child is 6 years of age or older; and
- (f) *Neisseria meningitidis*,

↳ to be communicable diseases.

2. Unless excused because of religious belief or medical condition, a child may not be enrolled in a private school in this State unless the child has been immunized against the mumps.

3. Except as otherwise provided in subsection ~~6~~ 7, unless excused because of religious belief or medical condition, a child may not be enrolled in a private school in this State:

(a) After June 30, 2002, unless the child has been immunized against hepatitis A and hepatitis B; and

(b) After June 30, 2003, unless the child has been immunized against varicella.

4. Unless excused because of religious belief or medical condition, a child may not be enrolled in grade 7 in a private school in this State after June 30, 2008, unless the child has been immunized against *Bordetella pertussis*. To satisfy the requirements of this subsection, a child must receive at least one dose of a vaccine against *Bordetella pertussis* after he or she obtained 10 years of age.

5. Except as otherwise provided in subsection ~~6~~ 7, unless excused because of religious belief or medical condition, a child may not be enrolled in grade 7 in a private school in this State after June 30, 2017, unless the child has been immunized against *Neisseria meningitidis* after he or she obtained 10 years of age.

6. *Unless excused because of religious belief or medical condition, a child may not be enrolled in grade 12 in a private school in this State after June 30, 2022, unless the child has received at least one dose of a vaccine protecting against Neisseria meningitidis after he or she obtained 16 years of age.*

7. The provisions of:

(a) Paragraph (a) of subsection 3 do not apply to a child who is enrolled in a private school in this State before July 1, 2002.

(b) Paragraph (b) of subsection 3 do not apply to a child who is enrolled in a private school in this State before July 1, 2003.

(c) Subsection 5 do not apply to a child who is enrolled in a private school in this State before July 1, 2009.

Sec. 12. Chapter 432A of NAC is hereby amended by adding thereto the provisions set forth as sections 13, 14 and 15 of this regulation.

Sec. 13. *The written statement required pursuant to NRS 432A.240 must be submitted to the operator of a child care facility or accommodation facility in which a child who has not been immunized pursuant to NRS 432A.230 or 432A.235, respectively, has been admitted:*

- 1. According to the renewal schedule of the child care facility or accommodation facility, as applicable, or at least annually, whichever is more frequent; and*
- 2. On a form provided by the Division.*

Sec. 14. *The written statement required pursuant to NRS 432A.250 must be submitted to the operator of a child care facility or accommodation facility in which a child who has a medical condition that will not permit the child to be immunized to the extent required by NRS 432A.230 or 432A.235, respectively, has been admitted on a form provided by the Division.*

Sec. 15. *A local health officer may conduct an audit of medical exemptions granted pursuant to NRS 432A.250 in the jurisdiction of the local health officer if:*

- 1. The reported immunization rate of a child care facility or an accommodation facility falls below 95 percent;*
- 2. A child care facility or an accommodation facility fails to report immunization data annually as required by NRS 432A.230 or 432A.235, respectively;*
- 3. The rate of medical exemptions granted by a child care facility or accommodation facility is higher than the average rate of medical exemptions granted by the child care facilities or accommodation facilities in this State, as applicable, as determined by the Division or from data available from the National Immunization Surveys conducted by the Centers for Disease Control and Prevention, or if such a survey or organization ceases to exist, an equivalent federal source; or*

4. The local health officer determines such an audit is necessary to protect public health on a case-by-case basis.

Sec. 16. NAC 441A.755 is hereby amended to read as follows:

441A.755 1. Except as otherwise provided in subsection 10 or unless excused because of religious belief or medical condition, a person shall not attend a university until he or she submits to the university proof of immunity to tetanus, diphtheria, measles, mumps, rubella and any other disease specified by the State Board of Health. The Division shall establish the immunization schedule required for admission of the student.

2. Except as otherwise provided in subsection 10 or unless excused because of religious belief or medical condition, a person who:

(a) Is less than 23 years of age; and

(b) Is enrolled as a freshman ,~~is~~

↪ shall not attend a university until he or she submits to the university proof of immunity to *Neisseria meningitidis*. The Division shall establish the immunization schedule required for admission of the student.

3. A student may enroll in the university conditionally if the student, or if the student is a minor, the parent or legal guardian of the student, submits a record of immunization stating that the student is in the process of obtaining the required immunizations, and that record shows that the student has made satisfactory progress toward obtaining those immunizations.

4. The university shall retain the proof of immunity on a computerized record or on a form provided by the Division.

5. The university shall not refuse to enroll a student because he or she has not been immunized if the student, or if the student is a minor, the parent or legal guardian of the student,

has submitted to the university a written statement indicating that his or her religious belief prohibits immunizations. The university shall keep the statement on file. *A statement submitted pursuant to this subsection must be submitted to the university:*

(a) Annually, according to the registration schedule of the university for the duration of the enrollment of the student at the university; and

(b) On a form provided by the Division.

6. If the medical condition of a student does not permit him or her to be immunized to the extent required, the student, or if the student is a minor, the parent or legal guardian of the student, must submit to the university a statement of that fact written by a licensed physician. The university shall keep the statement on file. *A statement submitted pursuant to this subsection must be submitted to the university on a form provided by the Division.*

7. If additional requirements of immunity are imposed by law after a student has been enrolled in the university, the student, or if the student is a minor, the parent or legal guardian of the student, shall submit an additional proof of immunity to the university stating that the student has met the new requirements of immunity.

8. If the health authority determines that, at the university, there is a case having a communicable disease against which immunity is required for admission to the university, and a student who has not submitted proof of immunity to that disease is attending that university, the president of the university shall require that:

(a) The student be immunized; or

(b) The student be excluded from the university until allowed to return by the health authority.

9. A student shall not attend a university from which he or she is excluded until allowed to return by the health authority. The parent or legal guardian of a student, if the student is a minor, shall not allow the student to attend a university from which he or she is excluded until allowed to return by the health authority.

10. Any student who is enrolled in a program of distance education and who does not attend a class on campus is exempt from the requirements of this section.

11. As used in this section:

(a) “Postsecondary educational institution” has the meaning ascribed to it in NRS 394.099.

(b) “University” means any university within the Nevada System of Higher Education or any private postsecondary educational institution.

Sec. 17. 1. This section and sections 5 and 11 of this regulation become effective upon filing with the Secretary of State.

2. Sections 1 to 4, inclusive, 6 to 10, inclusive, and 12 to 16, inclusive, of this regulation become effective on July 1, 2021.

NEVADA STATE BOARD OF HEALTH
DIVISION OF PUBLIC AND BEHAVIORAL HEALTH
4150 Technology Way, Suite 300
CARSON CITY, NV 89706

APPLICATION FOR VARIANCE

Please check the appropriate box that pertains to the NAC for which you are requesting a variance.

Division Administration
(NAC 439, 441A, 452, 453A, & 629)

Health Care Quality & Compliance
(NAC 449, 457, 459 & 652)

Child, Family & Community Wellness
(NAC 392, 394, 432A, 439, 441A, & 442)

Health Statistics, Planning,
Epidemiology and Response
(NAC 440, 450B, 452, 453, 453A, & 695C)

Public Health & Clinical Services
(NAC 211, 444, 446, 447, 583, & 585)

Date: 1-31-22

Name of Applicant: Jeremy Mancuso

Phone: 702-561-2160

Mailing Address:

City: Henderson

State: NV

Zip: 89014

We do hereby apply for a variance to
chapter/section

NAC 392.437

of the Nevada

Administrative Code (NAC). (For example: NAC 449.204)

Title of section in
question:

Immunization of pupils: Exemption if prohibited
by religious belief

Statement of existing or proposed conditions in violation of the NAC:

Regulation R046-20 requires a form in lieu of a written religious
exemption. However, the form is discriminatory and useless.
It also could be construed as incriminating. Further, it in no way
describes the reasons I religiously object to vaccinations. Signing
the form presents a hardship in that my religious freedom is
encroached upon and I am being forced to participate in
it. ~~The~~ The written exemption requirement in
NRS 392.437 is perfectly sufficient and has
been for many years.

Updated May 2020

NEVADA STATE BOARD OF HEALTH
DIVISION OF PUBLIC AND BEHAVIORAL HEALTH
4150 Technology Way, Suite 300
CARSON CITY, NV 89706

APPLICATION FOR VARIANCE

Date of initial operation (if existing):

N/A

ATTENTION: Please read this section closely. Your request for variance will be examined against these criteria:

Any person who, because of unique circumstances, is unduly burdened by a regulation of the State Board of Health and thereby suffers a hardship and the abridgement of a substantial property right may apply for a variance from a regulation. (NAC 439.200(1))

1. The State Board of Health will grant a variance from a regulation only if it finds from the evidence presented at the hearing that:

(a) There are circumstances or conditions which:

- (1) Are unique to the applicant;
- (2) Do not generally affect other persons subject to the regulation;
- (3) Make compliance with the regulation unduly burdensome; and
- (4) Cause a hardship to and abridge a substantial property right of the applicant; and

(b) Granting the variance:

- (1) Is necessary to render substantial justice to the applicant and enable him to preserve and enjoy his property; and
- (2) Will not be detrimental or pose a danger to public health and safety.

2. Whenever an applicant for a variance alleges that he suffers or will suffer economic hardship by complying with the regulation, he must submit evidence demonstrating the costs of his compliance with the regulation. The Board will consider the evidence and determine whether those costs are unreasonable. (NAC 439.240)

Therefore, it is important for your variance request to be as complete as possible. It is your responsibility to attach documentation supportive of your variance request.

Statement of degree of risk of health

There is no risk of health to my children or other children at school whether or not I sign this useless form.

NEVADA STATE BOARD OF HEALTH
DIVISION OF PUBLIC AND BEHAVIORAL HEALTH
4150 Technology Way, Suite 300
CARSON CITY, NV 89706

APPLICATION FOR VARIANCE

Please state in detail the circumstances or conditions which demonstrate that:

1. An exceptional and undue hardship results from a strict application of the Regulation:

The hardship exists in that I am being forced to participate in the erosion of my religious freedom. The economic hardships are many and variable. One example is that my AP student daughter is being deprived of her scholarship chances, increasing my cost to send her to college.

2. The variance, if granted, would not:

A. Cause substantial detriment to the public welfare.

The outcome of the situation is exactly the same whether I sign this useless form or not. My children ~~will~~ would go to school in the same exact state if I sign the form or ~~not~~ if the variance is granted. The form does ABSOLUTLY NOTHING to protect anyone's health.

B. Impair substantially the purpose of the regulation from which the application seeks a variance.

Hopefully, this regulation will rapidly be struck down with prejudice. Meanwhile I will reiterate that this regulation and the associated form do ABSOLUTLY NOTHING for the public good.

The bureau may require the following supporting documents to be submitted with and as a part of this application:

1. Legal description of property concerned

N/A

2. General area identification map

N/A

NEVADA STATE BOARD OF HEALTH
DIVISION OF PUBLIC AND BEHAVIORAL HEALTH
4150 Technology Way, Suite 300
CARSON CITY, NV 89706

APPLICATION FOR VARIANCE

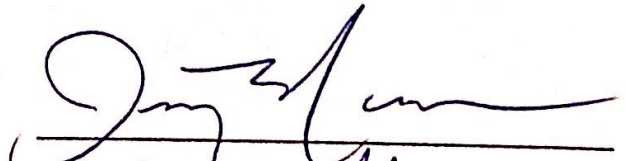
- _ 3. Plat map showing locations of all pertinent items and appurtenances
- _ 4. Well log (if applicable)
- _ 5. Applicable lab reports
- _ 6. Applicable engineering or construction/remodeling information
- _ 7. Other items (see following pages)

This application must be accompanied by evidence demonstrating the costs of your compliance with regulations or specific statutory standards. Your request will be placed on the Board of Health agenda 40 days or more after receipt in this office if accompanied by the required fee (NAC 439.210). The application and supporting documentation will form the basis for the Division of Public and Behavioral Health staff report and recommendation(s) to the Board. Failure to respond to the above statements may cause the Board to deny consideration of the application at the requested Board meeting.

Please schedule this hearing during:

- The next regularly scheduled Board of Health meeting, regardless of location.
- The next scheduled meeting in Carson City.
- The next scheduled meeting in Las Vegas.

Signature: _____



Printed Name: _____

Jeremy Mancuso

Title: _____

Date: _____

1-31-22



Preschool-12th Grade – Religious Immunization Exemption Certificate

For Use in Public, Private and Charter Schools

Nevada State Immunization Program • 4150 Technology Way Suite 210 • Carson City, NV 89706
<http://dpbh.nv.gov/Programs/Immunizations/> • (775) 684-5900 • nviz@health.nv.gov

Instructions for completing a Religious Immunization Exemption Certificate

Section 1: Enter school and student information.

Section 2: Have parent/guardian or student (if the student is 18 years of age or older) initial, sign, and date.

Section 3: For school use only: Obtain school signatures and dates.

| | | | | |
|--------------------------------------|----------------|---------------|-------------|-------|
| | | | | |
| Name of School (accepting exemption) | Street Address | City | Zip Code | Phone |
| Student's Name | | Date of Birth | Grade/Level | |
| Street Address | | City | Zip Code | Phone |
| | | | | |

I request that the above student be exempt from the vaccine(s) checked below based on my religious beliefs:

- | | | | |
|----------------------------------|--------------------------------------|--------------------------------------|------------------------------------|
| <input type="checkbox"/> DTaP | <input type="checkbox"/> Hepatitis A | <input type="checkbox"/> Hepatitis B | <input type="checkbox"/> IPV |
| <input type="checkbox"/> MenACWY | <input type="checkbox"/> MMR | <input type="checkbox"/> Td/Tdap | <input type="checkbox"/> Varicella |

I understand the risks of refusing to vaccinate based on my religious beliefs. I know that I may re-address this issue at any time and complete the required vaccinations.

| | |
|-------------------|---|
| _____ Initials | I understand the risk of contracting the disease(s) that the vaccine(s) prevent. |
| _____ Initials | I understand the risk of transmitting the disease(s) to others. |
| _____ Initials | I understand that, if an outbreak of vaccine-preventable disease should occur, an exempt student will be excluded from school by the school administrative head for a period of time as determined by the Nevada Division of Public and Behavioral Health based on a case-by-case analysis of public health risk. |
| _____ Initials | I understand that this form must be submitted annually based on an enrollment schedule set by the school district, charter school or private school. |

 Signature of Parent/Guardian or Student
 (if the student is 18 years of age or older)

 Date

| | |
|--|---------------|
| Section 3: For School Official Use Only: Please provide date and signatures | |
| _____ School Nurse or Designee Signature | _____ Date |
| _____ School Board or Designee Signature | _____ Date |
| It is the responsibility of the administrative head of the school to secure compliance with the regulations. The administrative head of the school shall exclude students who have not received the minimum number of required immunizations and who are not exempt pursuant to the regulations. | |

Steve Sisolak
Governor



Richard Whitley, MS
Director

**DEPARTMENT OF
HEALTH AND HUMAN SERVICES**
DIVISION OF PUBLIC AND BEHAVIORAL HEALTH
Helping people. It's who we are and what we do.



Lisa Sherych
Administrator

Ihsan Azzam,
Ph.D., M.D.
Chief Medical Officer

MEMORANDUM

DATE:

TO: Jon Pennell, DVM, Chairperson
State Board of Health

FROM: Lisa Sherych, Secretary
State Board of Health

RE: Variance Request #732, Mr. Jeremy Mancuso's Request for Variance of LCB File No. R046-20AP relating to student immunization exemptions

LCB File No. R046-20AP

Section 2 of LCB File No. R046-20AP provides:

The written statement required pursuant to NRS 392.437 must be submitted to the board of trustees of a school district or the governing body of a charter school in which a child who has not been immunized pursuant to NRS 392.435 has been accepted for enrollment:

- 1. Annually, according to the annual enrollment schedule of the school district or charter school; and*
- 2. On a form provided by the Division of Public and Behavioral Health of the Department of Health and Human Services.*

STAFF REVIEW

Variance applicant, Jeremy Mancuso ("Applicant"), submitted a request for a variance from the requirements of R046-20AP on January 31, 2022. The Applicant is requesting a waiver from the requirements of R046-20AP, which require a written statement indicating religious beliefs which prohibit immunization of school children to be submitted on a form provided by the Division of Public and Behavioral Health ("Division"). The Applicant asserts that the Division form is discriminatory and useless, and may be construed as incriminating. Further, Applicant states that the form does not describe the reasons he religiously objects to vaccinations and encroaches upon his religious freedom.

Nevada Revised Statute (NRS) 392.437 provides that "[a] public school shall not refuse to enroll a child as a pupil because the child has not been immunized pursuant to NRS 392.435 if the parents or guardian of the child has submitted to the board of trustees of the school district . . . a written statement indicating that their religious belief prohibits immunization of such child."

On December 10, 2020, proposed amendments to Nevada Administrative Code (NAC) Chapter 392, titled LCB File No. R046-20, came before this Board of Health for approval. The proposed amendments included language requiring the

written statement pursuant to NRS 392.437 be submitted on a form provided by the Division (attached). LCB File No. R046-20 went through the proper process of adoption, as set forth in NRS Chapter 233B, providing multiple opportunities for public input, as well as consideration of the impact on small businesses. The Board of Health approved LCB File No. R046-20 on December 10, 2020. Thereafter, the Legislative Commission approved LCB File No. R046-20AP, and on December 29, 2020, they were filed with the Secretary of State and became effective.

The Division drafted LCB File No. R046-20AP when schools and licensed child care facilities reported to the Nevada State Immunization Program that having standardized forms to track and file exemptions would help reduce some of the administrative burden related to registering/enrolling student(s) each year and would assist in managing potential disease outbreaks. Children who are not properly vaccinated are at risk for disease and can spread vaccine-preventable disease to others, especially those who are unable to receive the appropriate immunizations due to medical or religious reasons. Improving the process by which exemptions are filed, by developing and requiring a standardized form to be used statewide, can help ensure schools, licensed child care facilities, and universities in Nevada know quickly which students are exempt. This knowledge is extremely important for school staff to have during a vaccine-preventable disease outbreak, as good immunization record-keeping may facilitate the protection of all students, faculty, and staff at the facility. Additionally, a requirement for religious and temporary medical exemptions to be renewed annually protects the public's health by keeping school and childcare records current.

Pursuant to NRS 439.200(3), the Board of Health may grant a variance where it finds that:

- (a) Strict application of the regulation would result in exceptional and undue hardship to the person requesting the variance; and
- (b) The variance, if granted would not:
 - (1) Cause substantial detriment to the public welfare; or
 - (2) Impair substantially the purpose of that regulation.

The Division does not find here that strict application of LCB File No. R046-20AP would result in exception and undue hardship to the Applicant. Further, if granted, this variance impairs substantially the purpose of LCB File No. R046-20AP.

EXCEPTIONAL AND UNDUHARDSHIP

The Division does not find that an exceptional or undue hardship has been placed on the Applicant by strict application of this regulation.

The Applicant cites to the erosion of his religious freedom as a hardship resulting from the strict application of this regulation. Further, the Applicant asserts that the economic hardships are "many and variable," providing one example of his Advanced Placement (AP) daughter being deprived of her scholarship chances for college tuition.

The regulatory requirement to use a form developed by the Division does not cause exceptional or undue hardship on the Applicant. The regulation applies evenly to all parents seeking a religious exemption from the school board of trustees. The requirement to submit a written statement exists in statute and will continue to apply regardless of strict application of R046-20AP. Further, the hardships cited by the Applicant have not resulted from the requirements of R046-20AP, but rather the failure to comply with the requirements of R046-20AP.

PURPOSE OF THE REGULATION

The Division finds that this variance, if granted, would impair substantially the purpose of this regulation. R046-20AP serves to improve the process by which exemptions are filed, helping schools, licensed child care facilities, and universities in Nevada quickly identify those most at risk in a vaccine-preventable disease outbreak. Approval of a variance waiving this requirement would substantially impair this purpose.

PUBLIC COMMENT RECEIVED

Notice of the hearing is scheduled to be posted on the Division of Public & Behavioral Health website at <http://dpbh.nv.gov/Boards/BOH/Meetings/Meetings/> and at the 4150 Technology Way office in Carson City, NV. No public comments have been received to date.

STAFF RECOMMENDATION

DPBH staff recommends denying the Board of Health Variance Request #732, as it does not find that strict application of R046-20AP would result in exceptional or undue hardship on Mr. Mancuso and further that the variance, if granted, would substantially impair the purpose of R046-20AP.

PRESENTER

ATTACHMENTS

Preschool-12th Grade Religious Immunization Exemption Certificate