

Joe Lombardo
Governor



Richard Whitley,
MS
Director



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MPH
Administrator

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

NOTICE OF PUBLIC HEARING

UMC ORTHOPEDIC AND SPINE INSTITUTE OF LAS VEGAS, 2231 WEST CHARLESTON BOULEVARD, LAS VEGAS, NV 89102, IS REQUESTING A VARIANCE, #748, FROM THE NEVADA STATE BOARD OF HEALTH REGULATIONS.

NOTICE IS HEREBY GIVEN THAT UMC ORTHOPEDIC AND SPINE INSTITUTE OF LAS VEGAS, 2231 WEST CHARLESTON BOULEVARD, LAS VEGAS, NV 89102, has requested a variance from Nevada Administrative Code (NAC) 459.556 Administrative controls: Minimum exposure techniques; use of portable or mobile equipment, sections 459.556(1)(c) and(d).

A public hearing will be conducted on September 1, 2023, at 9:00 am by the Nevada State Board of Health to consider this request. This meeting will be held online and at physical locations, listed below.

Physical 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

[Click here to join the meeting online](#)

Please Note: If you experience technical difficulties connecting online, please call into the meeting to participate by phone.

Join by Phone:

1-775-321-6111
Phone Conference ID Number: 196 838 95#

UMC ORTHOPEDIC AND SPINE INSTITUTE OF LAS VEGAS, 2231 WEST CHARLESTON BOULEVARD, LAS VEGAS, NV 89102, is requesting a variance from NAC 459.556.1(c)and (d) which states, in relevant part:

NAC 459.556 Administrative controls: Minimum exposure techniques; use of portable or mobile equipment. (NRS 459.201)

1. Procedures and auxiliary equipment designed to minimize exposure to the patient and personnel commensurate with obtaining the needed diagnostic information must be utilized, including the following:

- (c) Except as otherwise provided in paragraph (d), portable or mobile equipment may be used only for:
- (1) Examinations where it is impractical to transfer the patient to a stationary radiographic installation; and
 - (2) Its designed purpose, as specified by the manufacturer; and
- (d) Portable or mobile equipment may be used in lieu of stationary equipment for a period of not more than 90 days while the facility is awaiting the delivery of new stationary equipment or the repair of registered stationary equipment if the following conditions are satisfied:
- (1) The portable or mobile equipment has been registered and the appropriate fee has been paid in accordance with NAC 459.154 and 459.161; and
 - (2) The registrant has requested, in writing, and been granted authorization from the Division to use the portable or mobile equipment in lieu of stationary equipment. Such a request must include, without limitation:
 - (I) The date of installation of the portable or mobile equipment; and
 - (II) The expected duration of the use of the portable or mobile equipment.

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 (DPBH), 4150 TECHNOLOGY WAY, CARSON CITY, NV

DIVISION OF PUBLIC AND BEHAVIORAL HEALTH WEBSITE
<http://dpbh.nv.gov/Boards/BOH/Meetings/Meetings/>

NEVADA PUBLIC NOTICE WEBSITE
<https://notice.nv.gov/>

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MEMORANDUM

DATE: Aug 8, 2023
TO: John Pennell, Chair
State Board of Health
FROM: Cody Phinney, Administrator
Division of Public and Behavioral Health
RE: Variance Case #748 UMC Orthopedic and Spine Institute of Las Vegas

SUBJECT: CASE #748, UMC ORTHOPEDIC AND SPINE INSTITUTE OF LAS VEGAS, VARIANCE TO NEVADA ADMINISTRATIVE CODE (NAC) 459.556, ADMINISTRATIVE CONTROLS: MINIMUM EXPOSURE TECHNIQUES; USE OF PORTABLE OR MOBILE EQUIPMENT, SECTION 556(1)(D).

Staff Review

For the below stated reasons and with the specified conditions, DPBH staff recommends the State Board of Health approve Case #748, UMC Orthopedic and Spine Institute of Las Vegas, a request for a variance to NAC 459.556(d).

NEVADA ADMINISTRATIVE CODE (NAC) 459.556(1)(c) and (d) state, in relevant part,

1. Procedures and auxiliary equipment designed to minimize exposure to the patient and personnel commensurate with obtaining the needed diagnostic information must be utilized, including the following:

(c) Except as otherwise provided in paragraph (d), portable or mobile equipment may be used only for:

(1) Examinations where it is impractical to transfer the patient to a stationary radiographic installation; and

(2) Its designed purpose, as specified by the manufacturer; and

(d) Portable or mobile equipment may be used in lieu of stationary equipment for a period of not more than 90 days while the facility is awaiting the delivery of new stationary equipment or the repair of registered stationary equipment if the following conditions are satisfied:

(1) The portable or mobile equipment has been registered and the appropriate fee has been paid in accordance with NAC 459.154 and 459.161; and

(2) The registrant has requested, in writing, and been granted authorization from the Division to use the portable or mobile equipment in lieu of stationary equipment. Such a request must include, without limitation:

- (I) The date of installation of the portable or mobile equipment; and
- (II) The expected duration of the use of the portable or mobile equipment.

Summary of Variance Request:

Variance applicant UMC Orthopedic and Spine Institute of Las Vegas (“Applicant”) submitted a request for variance from the requirements of NAC 459.556(1)(d) on May 1, 2023. The Applicant is requesting approval to use two portable x-ray machine in lieu of a stationary x-ray machines for examinations while they remodel their facility and install stationary x-ray machines, which is expected to be completed in February 2024.

Intent of Regulation:

The intent of NAC 459.556(1)(c) and (d) are to protect the health and safety of radiologic technologist and patients by limiting the use of portable or mobile X-ray machines to situations where patients cannot be transferred to a stationary X-ray machine.

The reasons for limiting the use of portable or mobile x-ray machines include:

- Portable and mobile x-ray machines are intended for bedside use when a patient cannot be transported to the designated imaging room with a permanently installed imaging system. Examples include intensive care, critical care, emergency, and surgical patients.
- Portable and mobile x-ray machines produce poorer quality images as compared to stationary machines due to several factors such as: the x-ray tube is less stable, inconsistent measurement of the distance and angle between the x-ray tube and the x-ray film, and limited imaging settings. These factors may lead to blurred or poor-quality images, which will have to be retaken. Repeat imaging increases the overall radiation exposure to patients.
- Portable and mobile x-ray machines do not protect technologists from radiation as well as properly installed stationary machines.

Degree of risk to public health or safety:

The health risk is increased radiation exposure to radiological technologists, patients, and non-radiation workers such as administrative staff.

Background information:

The applicant started using two portable x-ray machines in lieu of stationary machines on November 1, 2022, without requesting approval form the Division of Public and Behavioral Health (DPBH), as required by NAC 459.556. The Radiation Control Program (RCP) received multiple complaints from radiological technologists and non-radiation workers at the applicant's facility. Investigation into the complaints revealed the following:

- Mobile x-rays machines were being used to perform examinations on patients who were able to be transferred to a stationary x-ray machine.
- A radiological technologist received a radiation exposure that was ten times their expected dose.
- Due to a lack of adequate support equipment, technologists were required to routinely hold patients when taking x-rays.
- The two rooms where the x-rays were being taken were too small for the technologist to stand 6 feet away from the x-ray tube when taking x-rays.

- Administrative staff was being exposed to radiation from x-rays being performed in a hallway across from their workstation.
- The workload was as high as 120 patients a day between the two mobile x-ray machines.

The RCP has worked with the applicant to find solutions to reduce radiation exposure to both workers and patients. The Applicant has taken the following corrective actions to reduce health risks:

To protect radiological technologist:

- Technologists will not routinely hold or restrain patients when taking x-rays,
- Personnel monitoring for radiation exposure is measured and reviewed monthly, instead of quarterly, and when necessary corrective actions will be implemented to ensure radiation exposures are kept to levels that are as low as reasonably achievable,
- Technologists have been provided additional training specific to the use of mobile x-ray machines at the facility, and
- The following ancillary equipment was provided:
 - Protective barriers for technologist to stand behind when taking X-rays,
 - Lead aprons with thyroid collars for technologists,
 - Patent x-ray table with film holder,
 - Upright film holder for x-rays of standing patients,
 - Standing knee platform with patient stabilization bars, and
 - Positioning foams to stabilize patients and minimize movement during x-rays.

To reduce exposure to administrative staff and other non-radiation workers:

- X-rays are only taken in the two rooms designated on the floor plan in Attachment B.

To ensure adequate management oversight of these activities:

- Radiation safety personnel are performing ongoing oversight of the entire process to include weekly observations of work being performed.

To ensure radiation exposure to patients are maintained as low as reasonably achievable the Applicant will:

- Evaluate which examinations are suitable for portable x-ray machines.
- Determine which examinations will be sent off site to a stationary x-ray machine.
- Track all repeat images and review the data to ensure repeat images are kept at an acceptable level and implement corrective actions if needed.

RCP considers the determination of the types of examinations that should be performed using a portable or mobile x-ray machine a medical decision that should be made by the physician who prescribes the x-ray in consultation with the Applicant.

The Applicant has committed to implementing the above corrective actions (see Attachment A).

Approval of the variance with the above corrective actions will minimize the detriment to public health and safety to the extent practical.

Exceptional and undue hardship:

Strict application of 459.556(1)(c) and (d) would require the Applicant to send patients to an imaging facility that has a stationary x-ray machine. The Applicant has stated sending patients to another facility would increase the patient's cost of medical care and hinder or delay patient care.

The circumstances associated with this variance are unique. During inspections, the Applicant explained when they opened the facility in November 2022, they planned to install stationary x-ray machines in two rooms that previously housed stationary x-ray machines. However, due to a change in guidelines for the design and construction of hospitals, the two rooms needed to be larger to meet design criteria. This change required remodeling of the facility, which now has a completion date of February 2024.

Also, the Applicant images patients coming from post-operative appointments and the physicians need real-time imaging to assess patient's injuries and recovery. Due to licensing and insurance limitations patients cannot be imaged at UMC hospital, which is only one mile away.

Compliance with the regulation in this case is unduly burdensome given the variance is for a temporary condition, the applicant has increased radiation safety at the facility, and compliance is likely to increase the cost of medical care to patients and hinder physicians' ability to provide care to at least some of their patients.

Approval of this variance is not expected to affect other persons subject to the regulations.

Staff Recommendation

DPBH staff recommend the State Board of Health approve Case #748, UMC Orthopedic and Spine Institute of Las Vegas, a request for a variance to NAC 459.556(d) with the condition that the Applicant continues to implement the commitments in attachment A.

Impairment to the purpose of the regulation:

Approval of the variance will result in increased radiation exposure to radiological technologists and patients. However, implementation of the commitments in Attachment A, will reduce radiation exposures to both radiological technologists and patients to acceptable levels that are reasonably achievable.

Public Comments:

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 89706 by August 17, 2023 by 9:00 am. The Division of Public & Behavioral Health is not aware of any objections to this variance by any local authorities, and no public comments have been received to date.

Presenter:

John Follette, Manager Radiation Control Program

Division of Public and Behavioral Health

Bureau Health Protection and Preparedness

Attachments:

- A. Applicant Commitments
- B. Floor plan for UMC Orthopedic and Spine Institute

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: 05/01/23

Name of Applicant: Becky Christensen

Phone: 702-383-2524

Mailing Address: 1800 West Charleston Blvd

City: Las Vegas State: NV Zip: 89102

We do hereby apply for a variance to _____ of the Nevada
chapter/section NAC 459.556(1)(d)
Administrative Code (NAC). (For example: NAC 449.204)

Title of section in question: Administrative Controls: Minimum exposure techniques

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

This Application for Variance is in response to the decision made by the Division in the attached letter dated April 21, 2023 by John Follette, Manager of the Radiation Control Program. The Administrative code states that portable or mobile equipment may be used in lieu of stationary equipment for a period of not more than 90 days while the facility is awaiting the delivery of new stationary equipment or the repair of registered stationary equipment if 2 conditions are satisfied.

We believe that we have satisfied both conditions listed by having the portable equipment registered and the appropriate fees paid in accordance with NAC 459.154 and 459.161. Additionally, we did request in writing (once it was pointed out to us) to utilize the portable machines in lieu of stationary equipment. Our request included (I) the date of installation of the portable machines; and (II) the expected duration of the use of the portable equipment. Prior to the move of the portable equipment to the ortho clinic, we received direction verbally that we only needed to register the portable machines as statewide use. We were informed during a recent (April 2023) inspection that the request needed to be in writing. We apologize for this misunderstanding and requested the use in writing immediately after we were informed of this.

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): November 1, 2022

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

The UMC Orthopedic and Spine Institute of Las Vegas opened on November 1, 2022. The need to open quickly was due to the contracted orthopedic provider canceling their contract with the facility. The decision was made to hire 14 orthopedic physicians in order to continue the high quality of care that is needed in Las Vegas from this specialty. By removing these 14 providers from the community, timely care for orthopedic and spine emergencies could not have been provided at Nevada's only Level I Trauma center.

The placement of this portable equipment is a temporary solution. We are in the midst of approving the construction plans for the orthopedic clinic which will result in the installation of two dedicated stationary radiographic imaging suites. We were hoping to have the written request to place the portable units in the orthopedic clinic for use approved and then we were going to submit a request to extend the time that they were to be used per NAC 459.556(2). This section allows the Division to grant an extension of an authorization to use portable or mobile equipment in lieu of stationary equipment only if the registrant can demonstrate the extension is justified by submitting documentation indicating that there is a delay. Due to the current unforeseen delays, we expect to have the first room installed in December of 2023 and the second room in February of 2024.

NEVADA STATE BOARD OF HEALTH
DIVISION OF PUBLIC AND BEHAVIORAL HEALTH
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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 physicians that practice at the orthopedic clinic utilize radiography for all patients requiring care. The only reasonable place to provide these services is in the clinic itself. Many patients are coming to the clinic for their post-operative appointments and the physicians need real-time (on the spot) imaging to assess the patients injuries and recovery. By not providing imaging in the clinic, these patients would need to go to a free-standing outpatient imaging center (ex. Desert Radiology, Steinberg Diagnostics, etc.) which have an average wait time of 2-3 weeks to get onto the schedules. In addition, these patients cannot come directly to the hospital to receive their imaging due to the fact that the insurance plans will only cover imaging done in the clinic and they will not cover imaging completed inside of the hospital due to our licensing. In the end, the patient would have to pay more out of pocket for their imaging if not allowed to be completed in the orthopedic clinic. It is certainly not the standard of practice to have patients get their imaging elsewhere. All other orthopedic practices in Las Vegas provide imaging at their clinics in order to provide the physician and the patient immediate feedback of their orthopedic needs.

2. The variance, if granted, would not:
 - A. Cause substantial detriment to the public welfare.

All aspects of proper radiation protection to the public, patients and staff of the clinic have been verified by leadership of the facility and the State of Nevada, Radiation Control Program. Use of these portable machines does not cause undue harm to anyone if used per manufacturers guidelines. This is the case at the UMC Orthopedic and Spine Institute of Las Vegas.

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

I can only surmise the purpose of this regulation is to ensure that facilities are using techniques to minimize exposure to the public and healthcare workers. The use of portable radiographic machines is certainly not ideal for the workflow, but it does not increase exposure to the public or the healthcare workers if used according to manufacturers recommendations and by following ALARA (as low as (is) reasonably achievable". This means that we will make every reasonable effort to maintain exposures to ionizing radiation as far below the dose limits as practical, consistent with the purpose for which the licensed activity is undertaken, while taking into account the state of technology. The portable machines that are being utilized use the latest technology in portable machines which helps to reduce the dose to the public and the healthcare workers.

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 UMC Orthopedic and Spine Institute of Las Vegas
2231 West Charleston Blvd.
Las Vegas, NV 89102
- _ 2. General area identification map

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DIVISION OF PUBLIC AND BEHAVIORAL HEALTH
4150 Technology Way, Suite 300
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APPLICATION FOR VARIANCE

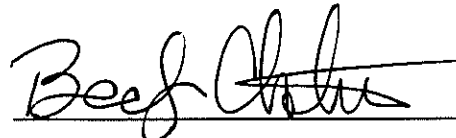
- 3. Plat map showing locations of all pertinent items and appurtenances
- 4. Well log (if applicable)
- 5. Applicable lab reports
- 6. Applicable engineering or construction/remodeling information
- 7. Other items (see following pages)

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:

Becky Christensen

Title:

Director of Imaging

Date:

5-1-2023

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

APPLICATION FOR VARIANCE

**PLEASE SUBMIT YOUR APPLICATION FOR VARIANCE BY USING
ANY OF THE FOLLOWING METHODS:**

MAIL TO:

Lisa Sherych, Administrator
Division of Public and Behavioral Health
4150 Technology Way, Suite 300
Carson City, NV 89706

FAX:

775-687-7570

EMAIL:

DPBH@health.nv.gov

Joe Lombardo
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

April 21, 2023

University Medical Center of Southern Nevada
Attn: Becky Christensen, Director of Imaging Services
1800 W. Charleston Boulevard
Las Vegas, Nevada 89102

Re: Request to Use Mobile X-ray Machines as Stationary X-ray Machines.

Dear Becky Christensen:

Your letter dated April 14, 2023, requesting to use mobile X-ray machines as stationary X-ray machines is acknowledged. However, the request cannot be granted because it does not comply with Nevada Administrative Code (NAC) 459.556.

NAC 459.556(1)(d) allows portable or mobile equipment to be used in lieu of stationary equipment for a period of not more than 90 days while the facility is awaiting the delivery of new stationary equipment or repair of registered stationary equipment. UMC has already used the mobile X-ray machines for over 120 days and the purpose for using the mobile equipment is to remodel the building, not waiting for the delivery of new stationary equipment or the repair of stationary equipment.

NAC 459.556(2) allows the Division to grant an extension of an authorization to use portable or mobile equipment in lieu of stationary equipment only if the registrant can demonstrate the extension is justified by submitting documentation indicating the delivery or repair of the stationary equipment was delayed. The request to use one mobile X-ray machine for a year and another for 2 years for the purpose of remodeling does not comply with NAC 459.556(2).

The request states, in part:

"It is impractical to make patients move to another location to receive their radiologic imaging and is not in the best interest of patient care. The Orthopedic clinic is not attached to the hospital, and it would make it difficult for these patients due to their lack of mobility, transportation, and parking for them to have to transfer to another location to receive their x-ray exams, and then return back to the clinic to see the orthopedic physician."

This request is denied as it does not comply with NAC 459.556. If you believe this regulation unduly burdens your facility due to unique circumstance, you may apply for a variance with the Board of Health through the procedure set forth in NAC 439.200 to 439.270, inclusive.

If you have any questions, please call me at 702-486-3017.

Sincerely,

A handwritten signature in blue ink that reads "John Follette". The signature is written in a cursive style.

John Follette
Manager, Radiation Control Program

JF/bg