

BOARD OF REGENTS BRIEFING PAPER

Appointment and Termination

September 5-6, 2024

BACKGROUND & POLICY CONTEXT OF ISSUE:

Current federal regulations (8 USC § 1184) provide for a J-1 foreign medical graduate, under certain circumstances, to apply for a waiver of the two-year foreign residence requirement upon completion of a J-1 exchange visitor program to remain in the United States to be employed, for no less than three years, in a specified medical specialty that is located in a geographic area so designated by the US Secretary of Health and Human Services (HHS) as an area of shortage of healthcare professionals. This waiver is referred to as the Conrad 30 Waiver Program and addresses the shortage of qualified doctors in areas of the United States deemed as medically underserved areas. Stringent eligibility requirements exist for the federal waiver program, including but not limited to, the current requirement of a foreign medical graduate to secure an employment contract of no less than three years in certain medical specialties and in HHS designated geographical areas. The Nevada Division of Public and Behavioral Health (DPBH) is authorized under the Conrad 30 Waiver Program to support up to 30 international medical graduates, per year, to serve in designated Health Professional Shortage Areas, Medically Underserved Areas/Populations, or in non-designated sites which serve underserved populations. The DPBH supports waiver applications for physicians holding J-1 Visas in order to improve access to primary or specialty care in Nevada. All 17 counties in Nevada have some type of shortage designation due to very high ratios of population to provider, and therefore Nevada's medical schools are able to use this program to recruit and hire physicians who are in short supply.

Existing Board Code (*Title 2, Chapter 5, Section 5*) requires that, under most circumstances, multiyear employment contracts be approved by the Board. While there are some exceptions within Code that grant an institution's President the authority to offer a multiyear contract of up to three years, the existing exceptions do not generally apply to the medical schools. Consequently, the Dean of the Kirk Kerkorian School of Medicine at UNLV has come to the Board on more than one occasion for approval of a multiple-year contract for a Conrad 30 Waiver applicant. Because the timing of steps and process required by DPBH for a medical graduate to secure a Conrad 30 Waiver do not necessarily align well with the Board process and meeting cycle, a common result is that a medical graduate becomes ineligible to secure a Conrad 30 Waiver. Unfortunately, over the past few years, UNLV has lost several qualified candidates due to such circumstances.

In order to allow for timely approval of multi-year contracts for the specific population of Conrad 30 Waiver applicants, as well as applicants to a like government agency physician waiver program, System staff and UNLV are proposing a policy revision to Code that would authorize a President to approve a multi-year contract in such narrow circumstances. The University of Nevada Reno School of Medicine is also supportive of this proposal.

The first reading of this proposed Code revision occurred at the February 29 – March 1, 2024, Board of Regents Meeting.

SPECIFIC ACTIONS BEING RECOMMENDED OR REQUESTED:

System Staff and UNLV request a revision to Board Code (*Title 2, Chapter 5, Section 5.4*) to specifically include a provision authorizing a President to offer a multiyear contract to a J-1 foreign medical graduate applying for a Conrad 30 Waiver or a like government agency physician waiver program.

IMPETUS (WHY NOW?):

This concern was brought forward by the Dean of the Kirk Kerkorian School of Medicine at UNLV due to challenges experienced in the process of attempting to hire foreign medical graduates on J-1 Visas who would otherwise be eligible for the Conrad 30 Waiver program.

CHECK THE NSHE STRATEGIC PLAN GOAL THAT IS SUPPORTED BY THIS REQUEST:

- Access (Increase access to higher education)

- Success (Improve student success)
- Close Institutional Performance Gaps
- Workforce (Meet workforce needs in Nevada)
- Research (Increase solutions-focused research)
- Coordination, Accountability, and Transparency (Ensure system coordination, accountability, and transparency)
- Not Applicable to NSHE Strategic Plan Goals

INDICATE HOW THE PROPOSAL SUPPORTS THE SPECIFIC STRATEGIC PLAN GOAL

The proposed revision to Code would support the Board’s goal to meet workforce needs in Nevada by simplifying the process of hiring physicians who are in short supply, including those in hard-to-find specialties.

BULLET POINTS TO SUPPORT REQUEST/RECOMMENDATION:

- The proposed revision of *Title 2, Chapter 5, Section 5.4* supports the utilization of NSHE foreign medical graduates to fulfill the State’s healthcare professional shortages and to assist the underserved areas of the State.
- Physicians who are eligible for the Conrad 30 Waiver have completed Accreditation Council for Graduate Medical Education (ACGME) approved residencies and/or fellowships after completing medical school. Their post-graduate training is identical to that of U.S. medical school graduates.

POTENTIAL ARGUMENTS AGAINST THE REQUEST/RECOMMENDATION:

None have been presented at this time.

ALTERNATIVE(S) TO WHAT IS BEING REQUESTED/RECOMMENDED:

None have been presented at this time.

RECOMMENDATION FROM THE CHANCELLOR’S OFFICE:

The Chancellor’s Office recommends approval.

11. COMPLIANCE WITH BOARD POLICY:

- Consistent With Current Board Policy: Title # _____ Chapter # _____ Section # _____
- Amends Current Board Policy: *Title 2, Chapter 5, Section 5.4*
- Amends Current Procedures & Guidelines Manual: Chapter # _____ Section # _____
- Other: _____
- Fiscal Impact: Yes _____ No Explain: _____

POLICY PROPOSAL - HANDBOOK
TITLE 2, CHAPTER 5, SECTION 5.4
Appointment and Termination

Additions appear in *boldface italics*; deletions are [~~stricken~~ and bracketed]

Section 5.4 Appointment and Termination

5.4.1 Recruitment Procedures. Each System institution shall develop procedures for recruitment and selection of faculty. These procedures shall be published in the administrative manual of the System institution. Such procedures shall be consistent with the provisions of the NSHE Code.

5.4.2 Duration of Employment Contracts.

- a. Except as provided in this Subsection, an employment contract shall be for a term not to exceed twelve months. In any case, an employment contract's termination shall coincide with the conclusion of a fiscal year of the System. Except as provided in this Subsection, an employment contract for a term in excess of twelve months or which overlaps a fiscal year requires the approval of the Board of Regents prior to being issued or becoming binding.
- b. At the time of the initial appointment to employment of a faculty member who would otherwise be eligible for tenure and after consultation with the applicable department or other similar administrative unit, a President may offer at the President's discretion, and the faculty member may agree to accept, an employment contract for a period of up to three years which would not provide for eligibility for an appointment with tenure. A faculty member employed under such a contract shall not be eligible for appointment with, nor shall have, tenure during the period of such contract under any circumstances. At the termination of such an initial employment contract, succeeding employment contracts for periods of up to three years each under the same conditions as stated in this paragraph may be offered by the President at the President's discretion and accepted by the faculty member. Alternatively, the contract, at the discretion of the President, may be renewed on an annual basis and accepted as such by the faculty member. Faculty members accepting employment contracts authorized by this paragraph shall be placed in Rank O or Range O, as the case may be. During the term of such contracts such faculty members shall be eligible to receive salary increases and faculty benefits authorized under Subsection 5.6 of the NSHE Code at the same time and under the same conditions as other faculty members of the System. An initial employment contract

authorized by this paragraph for a term of up to one year shall require at least 90 calendar days notice of nonrenewal of appointment prior to the contract's termination, such a contract for a term of two years shall require at least 180 calendar days notice of nonrenewal of appointment prior to the contract's termination and such a contract for a term of three years shall require at least 365 calendar days notice of nonrenewal of appointment prior to the contract's termination. All succeeding employment contracts authorized by this paragraph of whatever duration shall require 365 calendar days notice of nonrenewal of appointment prior to the contract's termination. Nothing in this paragraph shall prevent the President from offering at the President's discretion, and the faculty member from accepting, an employment contract for a position providing eligibility for tenure after the termination of any employment contract authorized by this paragraph.

- c. Except as provided in this paragraph, after the third year of employment, a President may offer at the President's discretion, and a nontenured faculty member may accept, an employment contract for a period of up to three years. At the termination of such an employment contract, succeeding employment contracts for periods of up to three years each may be offered by the President at the President's discretion and accepted by the nontenured faculty member. Alternatively, the contract, at the discretion of the President, may be renewed on an annual basis and accepted as such by the faculty member. During the term of such contracts, such nontenured faculty members shall be eligible to receive salary increases and faculty benefits authorized under Subsection 5.6 of the NSHE Code at the same time and under the same conditions as other faculty members of the System. The minimal notice of nonrenewal of appointment shall be as provided in Section 5.9 of the NSHE Code. The provisions of this paragraph shall not be applicable to faculty employed for a probationary period in a position providing eligibility for tenure or employed under paragraph (b) herein. The President may establish specific criteria in the institutional bylaws for issuance of extended contracts under this paragraph. Nothing in this paragraph shall give rise to any appointment or eligibility for appointment with tenure under any circumstances.
- d. Nontenured faculty at the William S. Boyd School of Law, after the third year of employment, may be offered and may accept an employment contract for a period of up to five years. At the termination of such an employment contract, succeeding employment contracts for periods of up to five years each may be offered. All such employment contracts shall be on the same basis as, and subject to the same limitations, terms and conditions as those described in paragraph (c) herein.
- e. ***A multi-year contract may be offered at the President's discretion to a J-1 foreign medical graduate applying for a waiver of the 2-year foreign***

residence requirement under the Conrad 30 Waiver Program or a like Interested Government Agency physician waiver program. The length of the contract shall meet the minimum requirement in 8 USC § 1184, where applicable.

- [e] *f.* Contracts for athletic directors, head athletic coaches, and certain other athletic personnel are subject to and governed by Title 4, Chapter 24.

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