

LEGISLATIVE BILL 449

Approved by the Governor April 17, 2019

Introduced by Walz, 15.

A BILL FOR AN ACT relating to the Uniform Credentialing Act; to amend sections 38-178, 38-180, and 38-2894, Reissue Revised Statutes of Nebraska, and section 38-1001, Revised Statutes Cumulative Supplement, 2018; to provide for disciplinary action for performing scleral tattooing and prohibit such practice as prescribed; to define a term; to provide for civil penalties; to harmonize provisions; and to repeal the original sections.

Be it enacted by the people of the State of Nebraska,

Section 1. Section 38-178, Reissue Revised Statutes of Nebraska, is amended to read:

38-178 Except as otherwise provided in sections 38-1,119 to 38-1,123, a credential to practice a profession may be denied, refused renewal, or have other disciplinary measures taken against it in accordance with section 38-185 or 38-186 on any of the following grounds:

(1) Misrepresentation of material facts in procuring or attempting to procure a credential;

(2) Immoral or dishonorable conduct evidencing unfitness to practice the profession in this state;

(3) Abuse of, dependence on, or active addiction to alcohol, any controlled substance, or any mind-altering substance;

(4) Failure to comply with a treatment program or an aftercare program, including, but not limited to, a program entered into under the Licensee Assistance Program established pursuant to section 38-175;

(5) Conviction of (a) a misdemeanor or felony under Nebraska law or federal law, or (b) a crime in any jurisdiction which, if committed within this state, would have constituted a misdemeanor or felony under Nebraska law and which has a rational connection with the fitness or capacity of the applicant or credential holder to practice the profession;

(6) Practice of the profession (a) fraudulently, (b) beyond its authorized scope, (c) with gross incompetence or gross negligence, or (d) in a pattern of incompetent or negligent conduct;

(7) Practice of the profession while the ability to practice is impaired by alcohol, controlled substances, drugs, mind-altering substances, physical disability, mental disability, or emotional disability;

(8) Physical or mental incapacity to practice the profession as evidenced by a legal judgment or a determination by other lawful means;

(9) Illness, deterioration, or disability that impairs the ability to practice the profession;

(10) Permitting, aiding, or abetting the practice of a profession or the performance of activities requiring a credential by a person not credentialed to do so;

(11) Performing or offering to perform scleral tattooing as defined in section 4 of this act by a person not credentialed to do so;

~~(12) (11) Having had his or her credential denied, refused renewal, limited, suspended, revoked, or disciplined in any manner similar to section 38-196 by another state or jurisdiction based upon acts by the applicant or credential holder similar to acts described in this section;~~

~~(13) (12) Use of untruthful, deceptive, or misleading statements in advertisements, including failure to comply with section 38-124;~~

~~(14) (13) Conviction of fraudulent or misleading advertising or conviction of a violation of the Uniform Deceptive Trade Practices Act;~~

~~(15) (14) Distribution of intoxicating liquors, controlled substances, or drugs for any other than lawful purposes;~~

~~(16) (15) Violations of the Uniform Credentialing Act or the rules and regulations relating to the particular profession;~~

~~(17) (16) Unlawful invasion of the field of practice of any profession regulated by the Uniform Credentialing Act which the credential holder is not credentialed to practice;~~

~~(18) (17) Violation of the Uniform Controlled Substances Act or any rules and regulations adopted pursuant to the act;~~

~~(19) (18) Failure to file a report required by section 38-1,124, 38-1,125, or 71-552;~~

~~(20) (19) Failure to maintain the requirements necessary to obtain a credential;~~

~~(21) (20) Violation of an order issued by the department;~~

~~(22) (21) Violation of an assurance of compliance entered into under section 38-1,108;~~

~~(23) (22) Failure to pay an administrative penalty;~~

~~(24) (23) Unprofessional conduct as defined in section 38-179; or~~

~~(25) (24) Violation of the Automated Medication Systems Act.~~

Sec. 2. Section 38-180, Reissue Revised Statutes of Nebraska, is amended to read:

38-180 For purposes of subdivision (12) ~~(11)~~ of section 38-178, a

certified copy of the record of denial, refusal of renewal, limitation, suspension, or revocation of a license, certificate, registration, or other similar credential or the taking of other disciplinary measures against it by another state or jurisdiction shall be conclusive evidence of a violation.

Sec. 3. Section 38-1001, Revised Statutes Cumulative Supplement, 2018, is amended to read:

38-1001 Sections 38-1001 to 38-10,171 and section 4 of this act shall be known and may be cited as the Cosmetology, Electrology, Esthetics, Nail Technology, and Body Art Practice Act.

Sec. 4. (1) For purposes of this section, scleral tattooing means the practice of using needles, scalpels, or other related equipment to produce an indelible mark or figure on the human eye by scarring or inserting a pigment on, in, or under:

- (a) The fornix conjunctiva;
- (b) The bulbar conjunctiva;
- (c) The ocular conjunctiva; or
- (d) Another ocular surface.

(2) Except as provided in subsection (3) of this section, a person shall not perform or offer to perform scleral tattooing on another person.

(3) This section does not apply to a person licensed to practice medicine and surgery or osteopathic medicine and surgery pursuant to the Uniform Credentialing Act when the licensee is performing a procedure within the scope of her or his practice.

(4) In addition to the remedies authorized in section 38-140 or 38-1,124, a person who performs scleral tattooing without being authorized to do so under the Uniform Credentialing Act shall be subject to a civil penalty not to exceed ten thousand dollars for each violation. If a violation continues after notification, this constitutes a separate offense. The civil penalties shall be assessed in a civil action brought for such purpose by the Attorney General in the district court of the county in which the violation occurred. Any civil penalty assessed and unpaid under this section shall constitute a debt to the State of Nebraska which may be collected in the manner of a lien foreclosure or sued for and recovered in any proper form of action in the name of the State of Nebraska in the district court of the county in which the violator resides or owns property. The department may also collect in such action attorney's fees and costs incurred in the collection of the civil penalty. The department shall, within thirty days after receipt, transmit any collected civil penalty to the State Treasurer to be disposed of in accordance with Article VII, section 5, of the Constitution of Nebraska.

Sec. 5. Section 38-2894, Reissue Revised Statutes of Nebraska, is amended to read:

38-2894 (1) A registration to practice as a pharmacy technician may be denied, refused renewal, removed, or suspended or have other disciplinary measures taken against it by the department, with the recommendation of the board, for failure to meet the requirements of or for violation of any of the provisions of subdivisions (1) through ~~(18)~~ ~~(17)~~ and ~~(20)~~ ~~(19)~~ through ~~(25)~~ ~~(24)~~ of section 38-178 and sections 38-2890 to 38-2897 or the rules and regulations adopted under such sections.

(2) If the department proposes to deny, refuse renewal of, or remove or suspend a registration, it shall send the applicant or registrant a notice setting forth the action to be taken and the reasons for the determination. The denial, refusal to renew, removal, or suspension shall become final thirty days after mailing the notice unless the applicant or registrant gives written notice to the department of his or her desire for an informal conference or for a formal hearing.

(3) Notice may be served by any method specified in section 25-505.01, or the department may permit substitute or constructive service as provided in section 25-517.02 when service cannot be made with reasonable diligence by any of the methods specified in section 25-505.01.

(4) Pharmacy technicians may participate in the Licensee Assistance Program described in section 38-175.

Sec. 6. Original sections 38-178, 38-180, and 38-2894, Reissue Revised Statutes of Nebraska, and section 38-1001, Revised Statutes Cumulative Supplement, 2018, are repealed.