

LEGISLATIVE BILL 277

Approved by the Governor March 28, 1986

Introduced by DeCamp, 40; Chronister, 18

AN ACT relating to respiratory care; to amend section 33-150, Reissue Revised Statutes of Nebraska, 1943, section 71-101, Revised Statutes Supplement, 1984, and sections 71-102, 71-110, 71-112, 71-113, 71-131, and 71-162, Revised Statutes Supplement, 1985; to create a board of examiners; to provide for the licensure of respiratory care practitioners; to provide exceptions; to provide for fees, examinations, continuing education, and temporary permits; to define terms; to create a fund; and to repeal the original sections.

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

Section 1. That section 33-150, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

33-150. The State Treasurer shall credit to the General Fund of the state fifteen per cent of all fees remitted to the state treasury by the state boards of examiners in medicine, chiropractic, respiratory care, dentistry, including fees from dental hygienists, optometry, pharmacy, embalming and funeral directing, including fees received from funeral establishments as well as embalmers and funeral directors, podiatry, and veterinary medicine, the Board of Occupational Therapy Practice, the Board of Cosmetologist Examiners, the Board of Barber Examiners, the Board of Nursing, the State Real Estate Commission, the Brand Fund of the Secretary of State, the State Board of Examiners for Professional Engineers and Architects, the State Athletic Commissioner, the Nebraska Oil and Gas Conservation Commission pursuant to sections 57-906 and 57-911, and any other state board, bureau, division, fund, or commission not mentioned above, if and when fifteen per cent of all such fees remitted into the treasury be appropriated or reappropriated to the General Fund of the state by the Legislature for the uses and purposes of the General Fund during any biennium. Nothing in this section shall be construed to apply to the fees inuring to the Nebraska Brand Inspection and Theft Prevention Fund and funds of the

State Racing Commission.

Sec. 2. That section 71-101, Revised Statutes Supplement, 1984, be amended to read as follows:

71-101. For the purpose of this act: (1) Board of examiners shall mean one of the boards appointed by the Department of Health to give examinations to applicants for licenses; (2) licensed, when applied to any licensee in any of the professions named in section 71-102, shall mean a person licensed under this act; (3) profession shall mean and refer to any of the several groups named in section 71-102; (4) department shall mean the Department of Health of the State of Nebraska; (5) wherever the masculine gender is used, it shall be construed to include the feminine; and the singular number shall include the plural when consistent with the intent of this act; and (6) this act shall mean and refer to sections 71-101 to 71-1,167 and 71-1,206 to 71-1,226 and sections 9 to 19 of this act, which for convenience shall be known as the Uniform Licensing Law.

Sec. 3. That section 71-102, Revised Statutes Supplement, 1985, be amended to read as follows:

71-102. No person shall engage in the practice of medicine and surgery, respiratory care, osteopathy, chiropractic, dentistry, dental hygiene, pharmacy, podiatry, optometry, physical therapy, audiology, speech-language pathology, embalming, funeral directing, psychology, or veterinary medicine and surgery, as defined in this act, unless such person shall have obtained from the Department of Health a license for that purpose.

Sec. 4. That section 71-110, Revised Statutes Supplement, 1985, be amended to read as follows:

71-110. (1) The different licenses to practice a profession shall be renewed biennially, except as provided in section 19 of this act, upon request of the licensee without examination. The biennial license renewals provided for in this section shall be accomplished in such manner as the department, with the approval of the board, shall establish by rule and regulation. The biennial expiration date in the different professions shall be as follows: January, pharmacy and psychology; February, embalming and funeral directing; March, dentistry and dental hygiene; April, podiatry and veterinary medicine and surgery; June, respiratory care; August, chiropractic and optometry; September, osteopathy; October, medicine and surgery; November, physical therapy; and December, audiology and speech-language pathology. The request for renewal need

not be in any particular form and shall be accompanied by the legal fee. Such fee shall be paid not later than the date of the expiration of such license, except that while actively engaged in the military service of the United States, as defined in the Soldiers' and Sailors' Civil Relief Act of 1940 as amended, persons licensed to practice the professions above named shall not be required to pay the renewal license fee.

(2) At least thirty days before the expiration of a license, as set forth in subsection (1) of this section, the Department of Health shall notify each licensee by a letter addressed to him or her at his or her last place of residence as noted upon its records. Any licensee who fails to pay the renewal fee on or before the date of expiration of his or her license shall be given a second notice in the same manner advising him or her (a) of the failure to pay, (b) that the license on that account has expired, (c) that the department will suspend action for thirty days following the date of expiration, (d) that upon the receipt of the renewal fee, together with an additional fee of five dollars, within that time, no order of revocation will be entered, and (e) that upon the failure to receive the amount then due and five dollars in addition to the regular renewal fee, as provided by subsection (1) of this section, an order of revocation will be entered.

(3) Any licensee who allows a license to lapse by failing to renew the same, as provided in subsections (1) and (2) of this section, may be reinstated upon the recommendation of the board of examiners for his or her profession and the payment of the regular and additional renewal fees then due.

Sec. 5. That section 71-112, Revised Statutes Supplement, 1985, be amended to read as follows:

71-112. The boards of examiners provided in section 71-111 shall be designated as follows: For medicine and surgery and osteopathy, Examiners in Medicine and Surgery; for respiratory care, Examiners in Respiratory Care Practice; for chiropractic, Examiners in Chiropractic; for dentistry and dental hygiene, Examiners in Dentistry; for optometry, Examiners in Optometry; for physical therapy, Examiners in Physical Therapy; for pharmacy, Examiners in Pharmacy; for audiology and speech-language pathology, Examiners in Audiology and Speech-Language Pathology; for embalming and funeral directing, Examiners in Embalming and Funeral Directing; for podiatry, Examiners in Podiatry; for psychology, Examiners of Psychologists; and for veterinary medicine and surgery, Examiners in Veterinary

Medicine.

Sec. 6. That section 71-113, Revised Statutes Supplement, 1985, be amended to read as follows:

71-113. (1) Each board of examiners shall consist of four members, including one lay person, except that (a) in audiology and speech-language pathology the board shall consist of five members, including one lay person, (b) in dentistry the board shall consist of eight members, including one lay person, (c) in medicine and surgery the board shall consist of seven members, including one lay person, (d) in embalming and funeral directing the board shall consist of four members, including one lay person appointed by the Department of Health, (e) in pharmacy the board shall consist of five members, including one lay member; and (f) in psychology the board shall consist of six members, including one lay person. Notwithstanding any other provision of law, the Department of Health shall appoint one lay member to each board of examiners set forth in this subsection in accordance with section 71-114.

(2) Membership on the Board of Examiners in Audiology and Speech-Language Pathology shall consist of two members who are audiologists, two members who are speech-language pathologists, and one lay person. All professional members shall be qualified to be licensed in accordance with this act. The professional members appointed to the initial board shall be licensed not later than six months after being appointed to the board. If for any reason a professional member cannot be licensed within such time period, a new professional member shall be appointed.

(3) Membership on the Board of Examiners in Respiratory Care Practice shall consist of two respiratory care practitioners, one physician, and one lay person. Each respiratory care practitioner examiner first appointed to the board pursuant to this section shall be a person who is and has been actively engaged in the practice of respiratory care for at least two years immediately preceding his or her appointment to the board and shall be licensed not later than six months after being appointed to the board. If for any reason a respiratory care practitioner examiner cannot be licensed within such a time period, a new examiner shall be appointed.

Sec. 7. That section 71-131, Revised Statutes Supplement, 1985, be amended to read as follows:

71-131. (1) In the absence of any specific requirement or provision relating to any particular

profession:

(a) The Department of Health may adopt and promulgate rules and regulations pertaining to the grading of examination papers;

(b) An examinee must obtain an average grade of seventy-five per cent;

(c) An examinee must obtain a grade of sixty per cent in each subject in which examined; and

(d) An examinee who fails to comply with subdivisions (b) and (c) of this subsection may take the entire examination over without charge at any time within fourteen months, except that in the case in which a national standardized examination is utilized by any examining board, which requires the payment of a fee to purchase such examination, the Department of Health shall require the applicant to pay the appropriate examination fee.

(2) In pharmacy all applicants shall be required to attain a grade to be determined by the Board of Examiners in Pharmacy in an examination in pharmacy and a grade of seventy-five per cent in an examination in jurisprudence of pharmacy. When an applicant falls below the designated grade in one of the two examinations, the applicant may take that examination over without charge at any time within fourteen months at any regular session of such board held for the purpose of giving examinations or at the first regular session of the board held for the purpose of giving examinations thereafter if not held within that time. If an applicant falls below the designated grade in both the examination in pharmacy and the examination in jurisprudence of pharmacy, the applicant shall take both examinations over, and may do this without charge at any time within fourteen months at any regular session of the board held for the purpose of giving examinations or at the first regular session of the board held for the purpose of giving examinations thereafter if not held within that time. Notwithstanding any provision of this section, whenever the Board of Examiners in Pharmacy utilizes a national standardized examination, which requires the payment of a fee to purchase such examination, the Department of Health shall require the applicant to pay the appropriate examination fee.

(3) In medicine and surgery the passing grade shall be determined by the department upon recommendation of the Board of Examiners in Medicine and Surgery. Fees for reexamination shall be determined by the department upon recommendation of the Board of Examiners in Medicine and Surgery.

(4) In psychology the passing grade shall be determined by the department upon recommendation of the Board of Examiners of Psychologists. Fees for reexamination shall be the same as the fee for the initial examination.

(5) In respiratory care the passing grade shall be determined by the department on the recommendation of the Board of Examiners in Respiratory Care Practice. Fees for reexamination shall be the same as the fee for the initial examination.

Sec. 8. That section 71-162, Revised Statutes Supplement, 1985, be amended to read as follows:

71-162. (1) The following fees shall be collected by the Department of Health and turned in to the state treasury as is now provided by law:

(a) Not less than fifty dollars nor more than three hundred dollars for a license issued on the basis of an examination given by the appropriate state or national board of examiners or on the basis of a license granted by another state or territory to practice dental hygiene, respiratory care, embalming, physical therapy, dentistry, podiatry, optometry, pharmacy, chiropractic, audiology, speech-language pathology, or funeral directing and for a license to practice psychology on the basis of such an examination or foreign license, one hundred dollars plus actual costs incurred in issuing the license, as determined by the department, except that the total fee shall not exceed four hundred dollars;

(b) Not less than twenty dollars nor more than one hundred dollars for the biennial renewal of a license to practice medicine and surgery, osteopathy, or any of the professions enumerated in subdivision (a) of this subsection except psychology, for which the renewal fee shall equal the actual costs incurred for such renewal by the department or one hundred dollars, whichever is less;

(c) For a license to practice medicine and surgery and osteopathy issued upon the basis of an examination given by the board of examiners, three hundred dollars, and this may be adjusted by the Department of Health upon recommendation of the Board of Examiners in Medicine and Surgery to cover necessary expenses;

(d) For a license to practice medicine and surgery and osteopathy issued without examination based on a license granted in another state, territory, or the District of Columbia, two hundred dollars, and this may be adjusted by the Department of Health upon

recommendation of the Board of Examiners in Medicine and Surgery to cover necessary expenses;

(e) For a certified statement that a licensee is licensed in this state, five dollars; and

(f) For a duplicate original license, five dollars, except that for a duplicate license to practice psychology the fee shall be ten dollars.

All money paid as license and renewal fees shall be kept in a separate fund to be used for the benefit of the profession so paying such fees.

(2) The Department of Health, upon the recommendation of the appropriate examining board, shall determine the exact fee to be charged for a license or license renewal in each profession enumerated in subdivisions (1)(a) and (b) of this section based on the administrative costs incurred by the board. Such board may provide differing rates for licenses issued on the basis of an examination and licenses issued on the basis of a license from another state or territory.

Sec. 9. As used in sections 9 to 19 of this act, unless the context otherwise requires:

(1) Board shall mean the Board of Examiners in Respiratory Care Practice;

(2) Medical director shall mean a licensed physician who has the qualifications as described in section 11 of this act;

(3) Respiratory care shall mean the health specialty responsible for the treatment, management, diagnostic testing, control, and care of patients with deficiencies and abnormalities associated with the cardiopulmonary system. Respiratory care shall not be limited to a hospital setting and shall include the therapeutic and diagnostic use of medical gases, administering apparatus, humidification and aerosols, ventilatory assistance and ventilatory control, postural drainage, chest physiotherapy and breathing exercises, respiratory rehabilitation, cardiopulmonary resuscitation, and maintenance of nasal or oral endotracheal tubes. It shall also include the administration of aerosol and inhalant medications to the cardiorespiratory system and specific testing techniques employed in respiratory care to assist in diagnosis, monitoring, treatment, and research. Such techniques shall include, but not be limited to, measurement of ventilatory volumes, pressures, and flows, measurement of physiologic partial pressures, pulmonary function testing, and hemodynamic and other related physiological monitoring of the cardiopulmonary system; and

(4) Respiratory care practitioner shall mean:

(a) Any person employed in the practice of respiratory care who has the knowledge and skill necessary to administer respiratory care to patients of all ages with varied cardiopulmonary diseases and to patients in need of critical care and who is capable of serving as a resource to the physician and other health professionals in relation to the technical aspects of respiratory care including effective and safe methods for administering respiratory care; and

(b) A person capable of supervising, directing, or teaching less skilled personnel in the provision of respiratory care services.

Sec. 10. After January 1, 1987, no person shall engage in the practice of respiratory care unless he or she is licensed for such purpose pursuant to the Uniform Licensing Law. Commencing on June 1, 1988, licenses shall be renewed on June 1 of each even-numbered year. The department, on the recommendation of the board, shall set the initial license fees and the biennial license renewal fees for respiratory care practitioners pursuant to section 71-162. The department, on the recommendation of the board, shall determine the continuing education requirements for the period from January 1, 1987, to June 1, 1988.

Sec. 11. Any health care facility or home care agency providing inpatient or outpatient respiratory care service shall designate a medical director, who shall be a licensed physician who has special interest and knowledge in the diagnosis and treatment of respiratory problems. Such physician shall (1) be an active medical staff member of a licensed health care facility, (2) whenever possible be qualified by special training or experience in the management of acute and chronic respiratory disorders, and (3) be competent to monitor and assess the quality, safety, and appropriateness of the respiratory care services which are being provided. The medical director shall be accessible to and assure the competency of respiratory care practitioners and shall require that respiratory care be ordered by a physician who has medical responsibility for any patient that needs such care.

Sec. 12. The practice of respiratory care shall be performed only under the direction of a medical director and upon the order of a licensed physician.

Sec. 13. (1) An applicant for a license to practice respiratory care shall submit to the board written evidence, verified by oath, that the applicant:

(a) Has completed an approved four-year high school course of study or the equivalent of such study; and

(b) Has completed a respiratory care educational program accredited by the American Medical Association's Committee on Allied Health Education and Accreditation in collaboration with the Joint Review Committee for Respiratory Therapy Education or an accrediting agency approved by the department.

(2) In order to be licensed, initial applicants shall pass an examination approved by the department on the recommendation of the board.

Sec. 14. (1) The board may issue temporary permits to students and graduates of training programs approved by the board for a period of one year. Temporary permits may be extended by the board for one consecutive year with the approval of the department upon a showing of good cause.

(2) An applicant shall have up to two years from the date of issuance of a temporary permit to successfully complete the examination. After such period the board may require the applicant to submit proof of an additional amount of training, approved by the board, prior to reexamination.

(3) The board shall, with the approval of the department, adopt and promulgate rules and regulations for issuance of temporary permits for students and graduates of approved training programs to practice respiratory care prior to licensure.

Sec. 15. The board shall, with the approval of the department, issue a license to perform respiratory care to an applicant who, on or before the effective date of this act, has passed the Certified Respiratory Therapy Technician or Registered Respiratory Therapist examination administered by the National Board for Respiratory Care or the appropriate accrediting agency acceptable to the department. Any applicant who has not passed either of such examinations as of the effective date of this act and who, through written evidence, verified by oath, demonstrates that he or she is currently a respiratory care practitioner shall be given a temporary license to practice respiratory care for a period of up to twenty-four months from the effective date of this act. Such applicant shall pass the licensure examination administered by the board during the twenty-four month period in order to continue to practice respiratory care after the temporary license has expired.

Sec. 16. (1) Each Nebraska-licensed

respiratory care practitioner in active practice within the State of Nebraska shall be required on or before June 1 of each even-numbered year, commencing in 1988, to attend twenty hours biennially of such approved scientific schools, clinics, forums, lectures, or educational seminars as may be approved by the board as a prerequisite for the licensee's next subsequent license renewal if at least twenty hours of such educational program are conducted biennially in the State of Nebraska, except as provided in section 19 of this act.

(2) Each licensed respiratory care practitioner in active practice within the State of Nebraska shall, on or before June 1 of each even-numbered year, certify on an affidavit form provided by the board that he or she has complied with this section during the preceding two-year period or the period since the license was last issued. Such board of examiners shall, on or before June 1 of each even-numbered year, report all licensees who have complied with the educational requirements to the Director of the Bureau of Examining Boards. Licensees who have not complied with such requirements shall not be issued a renewal license unless exempt or unable to comply due to circumstances beyond their control. Procedures for denial of renewal of the license of such licensees shall be identical to those for nonpayment of renewal fees as provided in sections 71-110 and 71-149. The department, on the recommendation of the board, may waive all or part of the continuing education requirements for any two-year licensing period, or for the period since the license was last issued, when a licensee submits documentation that circumstances beyond his or her control prevented completion of such requirements. Such circumstances shall include situations in which:

(a) The licensee holds a Nebraska license but is not in the practice of respiratory care in Nebraska;

(b) The licensee has served in the regular armed forces of the United States during any part of the twenty-four months immediately preceding the license renewal date;

(c) The licensee has submitted proof that he or she was suffering from a serious or disabling illness or physical disability which prevented completion of the required number of continuing education hours during the twenty-four months immediately preceding any license renewal date; and

(d) The licensee was first licensed within the

twenty-four months immediately preceding the renewal date provided in section 71-110.

(3) The department, upon the recommendation of the board, may adopt and promulgate rules and regulations not inconsistent with this section pertaining to waiver of continuing education requirements.

(4) Each licensee shall provide a sworn affidavit listing continuing education activities in which he or she participated or attended, the amount of credit received for each activity, and the date, location, and name of the approved provider which sponsored the activity on a separate form or portion of the license renewal application as may be designed by the department. Each licensee shall be responsible for maintaining in his or her personal files such certificates or records of credit from continuing education activities received from approved providers.

(5) The board may biennially select, in a random manner, a sample of the license renewal applications for audit of continuing education credits. Each licensee selected for audit shall be required to produce documentation of his or her attendance at continuing education seminars listed on his or her renewal application.

Sec. 17. Sections 9 to 19 of this act shall not prohibit:

(1) The practice of respiratory care which is an integral part of the program of study by students enrolled in approved respiratory care education programs;

(2) The gratuitous care, including the practice of respiratory care, of the ill by a friend or member of the family or by a person who is not licensed to practice respiratory care if such person does not represent himself or herself as a respiratory care practitioner;

(3) The practice of respiratory care by nurses, physicians, physician assistants, physical therapists, or any other professional licensed under the Uniform Licensure Law when such practice is within the scope of practice for which that person is licensed; or

(4) The practice of any respiratory care practitioner of this state or any other state or territory while employed by the federal government or any bureau or division thereof while in the discharge of his or her official duties.

Sec. 18. In the event a respiratory care practitioner renders respiratory care in a hospital or

health care facility, he or she shall be subject to the rules and regulations of that facility. Such rules and regulations may include, but not be limited to, reasonable requirements that the respiratory care practitioner maintain professional liability insurance with such coverage and limits as may be established by the hospital or other health care facility upon the recommendation of the medical staff.

Sec. 19. The Respiratory Care Practitioners Fund is hereby created. All money in the fund shall be used exclusively by the Bureau of Examining Boards to carry out its statutory and regulatory duties pertaining to the practice of respiratory care. The State Treasurer shall credit to the Respiratory Care Practitioners Fund, on and after the effective date of this act, all license and renewal fees for the practice of respiratory care remitted to the state treasury by the department pursuant to section 71-162, except such amount distributed pursuant to sections 33-150 and 71-6228. Any money in the fund available for investment shall be invested by the state investment officer pursuant to sections 72-1237 to 72-1269.

Sec. 20. That original section 33-150, Reissue Revised Statutes of Nebraska, 1943, section 71-101, Revised Statutes Supplement, 1984, and sections 71-102, 71-110, 71-112, 71-113, 71-131, and 71-162, Revised Statutes Supplement, 1985, are repealed.