

LEGISLATIVE BILL 236

Approved by the Governor May 15, 2007

Introduced by Johnson, 37; Hansen, 42; Pirsch, 4

FOR AN ACT relating to health and human services; to amend sections 71-1,133, 71-1,134, 71-1,135, 71-1,135.02, 71-1,135.04, 71-1,135.06, 71-1,136, 71-1,136.01, 71-1,136.04, 71-1,147, 71-415, and 71-6720, Reissue Revised Statutes of Nebraska, sections 71-107, 71-110, 71-112, 71-162, and 71-168, Revised Statutes Cumulative Supplement, 2006, and sections 71-101, 71-102, and 71-1,142, Revised Statutes Cumulative Supplement, 2006, as amended by sections 296, 297, and 344, respectively, Legislative Bill 296, One Hundredth Legislature, First Session, 2007; to provide for, change, and eliminate provisions relating to the regulation of perfusionists, optometrists, pharmacy technicians, and in-home personal services; to harmonize provisions; to provide severability; to repeal the original sections; and to outright repeal sections 71-1,135.03, 71-1,135.05, and 71-1,147.34, Reissue Revised Statutes of Nebraska, and section 71-1,147.33, Revised Statutes Cumulative Supplement, 2006.

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

Section 1. Section 71-101, Revised Statutes Cumulative Supplement, 2006, as amended by section 296, Legislative Bill 296, One Hundredth Legislature, First Session, 2007, is amended to read:

71-101 Sections 71-101 to 71-1,107.30, 71-1,133 to 71-1,338, 71-1,343 to 71-1,361, and 71-1301 to 71-1354, sections 31 to 38 of this act, the Perfusion Practice Act, and the Physical Therapy Practice Act shall be known and may be cited as the Uniform Licensing Law.

For purposes of the Uniform Licensing Law, unless the context otherwise requires:

(1) Board or professional board means one of the boards appointed by the State Board of Health pursuant to sections 71-111 and 71-112;

(2) Licensed, when applied to any licensee in any of the professions named in section 71-102, means a person licensed under the Uniform Licensing Law;

(3) Profession or health profession means any of the several groups named in section 71-102;

(4) Department means the Division of Public Health of the Department of Health and Human Services;

(5) Whenever a particular gender is used, it is construed to include both the masculine and the feminine, and the singular number includes the plural when consistent with the intent of the Uniform Licensing Law;

(6) License, licensing, or licensure means permission to engage in a health profession which would otherwise be unlawful in this state in the absence of such permission and which is granted to individuals who meet prerequisite qualifications and allows them to perform prescribed health professional tasks and use a particular title;

(7) Certificate, certify, or certification, with respect to professions, means a voluntary process by which a statutory, regulatory entity grants recognition to an individual who has met certain prerequisite qualifications specified by such regulatory entity and who may assume or use the word certified in the title or designation to perform prescribed health professional tasks. When appropriate, certificate means a document issued by the department which designates particular credentials for an individual;

(8) Lapse means the termination of the right or privilege to represent oneself as a licensed, certified, or registered person and to practice the profession when a license, certificate, or registration is required to do so;

(9) Credentialing means the totality of the process associated with obtaining state approval to provide health care services or human services or changing aspects of a current approval. Credentialing grants permission to use a protected title that signifies that a person is qualified to provide the services of a certain profession. Credential includes a license, certificate, or registration;

(10) Dependence means a compulsive or chronic need for or an active addiction to alcohol or any controlled substance or narcotic drug; and

(11) Director means the Director of Public Health of the Division of Public Health.

Sec. 2. Section 71-102, Revised Statutes Cumulative Supplement,

2006, as amended by section 297, Legislative Bill 296, One Hundredth Legislature, First Session, 2007, is amended to read:

71-102 (1) No person shall engage in the practice of medicine and surgery, athletic training, respiratory care, osteopathic medicine, chiropractic, dentistry, dental hygiene, pharmacy, podiatry, optometry, massage therapy, physical therapy, audiology, speech-language pathology, embalming, funeral directing, psychology, veterinary medicine and surgery, medical nutrition therapy, acupuncture, perfusion, mental health practice, or alcohol and drug counseling unless such person has obtained a license from the department for that purpose.

(2) No person shall hold himself or herself out as a certified social worker or certified master social worker unless such person has obtained a certificate from the department for that purpose.

(3) No person shall hold himself or herself out as a certified professional counselor unless such person has obtained a certificate from the department for such purpose.

(4) No person shall hold himself or herself out as a certified marriage and family therapist unless such person has obtained a certificate from the department for such purpose.

Sec. 3. Section 71-107, Revised Statutes Cumulative Supplement, 2006, is amended to read:

71-107 Every person credentialed under the Uniform Licensing Law to practice a profession shall keep the credential available in an office or place in which he or she practices and shall show such proof of credentialing upon request.

On all signs, announcements, stationery, and advertisements of persons credentialed to practice osteopathic medicine, chiropractic, podiatry, optometry, audiology, speech-language pathology, medical nutrition therapy, professional counseling, social work, marriage and family therapy, mental health practice, massage therapy, physical therapy, ~~or~~ alcohol and drug counseling, or perfusion shall be placed the word Osteopathic Physician, Chiropractor, Podiatrist, Optometrist, Audiologist, Speech-Language Pathologist, Medical Nutrition Therapist, Professional Counselor, Social Worker, Master Social Worker, Marriage and Family Therapist, Mental Health Practitioner, Massage Therapist, Physical Therapist, ~~or~~ Alcohol and Drug Counselor, or Perfusionist, as the case may be.

Sec. 4. Section 71-110, Revised Statutes Cumulative Supplement, 2006, is amended to read:

71-110 (1) The credential to practice a profession shall be renewed biennially without examination upon request of the credentialed person and upon documentation of continuing competency pursuant to sections 71-161.09 and 71-161.10. The biennial credential renewals provided for in this section shall be accomplished in such manner as the department, with the approval of the designated professional board, shall establish by rule and regulation. The biennial expiration date in the different professions shall be as follows:

- (a) January, pharmacy and psychology;
- (b) February, funeral directing and embalming;
- (c) March, dentistry and dental hygiene;
- (d) April, podiatry and veterinary medicine and surgery;
- (e) May, athletic training and acupuncture;
- (f) June, respiratory care;
- (g) August, chiropractic and optometry;
- (h) September, alcohol and drug counseling, medical nutrition therapy, mental health practice including any associated certification, and osteopathic medicine;
- (i) October, medicine and surgery and perfusion;
- (j) November, massage therapy and physical therapy; and
- (k) December, audiology and speech-language pathology.

The request for renewal need not be in any particular form and shall be accompanied by the renewal fee. Such fee shall be paid not later than the date of the expiration of such credential, 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 the act existed on January 1, 2002, persons credentialed to practice the professions listed in this subsection shall not be required to pay the renewal fee.

(2) When a person credentialed pursuant to the Uniform Licensing Law desires to have his or her credential lapse upon expiration, he or she shall notify the department of such desire in writing. The department shall notify the credentialed person in writing of the acceptance or denial of the request to allow the credential to lapse. When the lapsed status becomes effective, the right to represent himself or herself as a credentialed person and to practice the profession in which a license is required shall terminate.

To restore the credential from lapsed to active status, such person shall be required to meet the requirements for initial credentialing which are in effect at the time that he or she wishes to restore the credential.

(3) When a person credentialed pursuant to the Uniform Licensing Law desires to have his or her credential placed on inactive status upon its expiration, he or she shall notify the department of such desire in writing and pay the inactive status fee. The department shall notify the credentialed person in writing of the acceptance or denial of the request to allow the credential to be placed on inactive status. When the credential is placed on inactive status, the credentialed person shall not engage in the practice of such profession. A credential may remain on inactive status for an indefinite period of time. In order to move a credential from inactive to active status, a person shall be required to meet the requirements for renewal which are in effect at the time he or she wishes to regain active status.

(4) At least thirty days before the expiration of a credential, the department shall notify each credentialed person by a letter addressed to him or her at his or her last place of residence as noted upon its records. Any credentialed person who fails to notify the department of his or her desire to let his or her credential lapse or be placed on inactive status upon its expiration or who fails to meet the requirements for renewal on or before the date of expiration of his or her credential shall be given a second notice in the same manner as the first notice advising him or her (a) of the failure to meet the requirements for renewal, (b) that the credential has expired, (c) that the person is subject to an administrative penalty under section 71-164.01 if he or she practices after the expiration date and prior to renewal of the credential, (d) that upon the receipt of the renewal fee and the required late fee within thirty days after the expiration date, no order of revocation will be entered, and (e) that upon the failure to comply with subdivision (d) of this subsection within such time, the credential will be revoked in the manner prescribed in section 71-149.

(5) Any credentialed person who desires to reinstate the credential not more than one year after the date of revocation for failure to meet the renewal requirements shall apply to the department for reinstatement. The credential may be reinstated upon the recommendation of the board for his or her profession and the receipt of evidence of meeting the renewal requirements and paying the required late fee.

(6) Any credentialed person who desires to reinstate the credential more than one year after the date of revocation for failure to meet the renewal requirements shall petition the board to recommend reinstatement as prescribed in section 71-161.05. The credential may be reinstated upon the recommendation of the board for his or her profession and the receipt of evidence of meeting the renewal requirements and paying the required late fee.

Sec. 5. Section 71-112, Revised Statutes Cumulative Supplement, 2006, is amended to read:

71-112 (1) Professional boards under the Uniform Licensing Law shall be designated as follows:

- (a) For medicine and surgery, acupuncture, perfusion, and osteopathic medicine and surgery, Board of Medicine and Surgery;
- (b) For athletic training, Board of Athletic Training;
- (c) For respiratory care, Board of Respiratory Care Practice;
- (d) For chiropractic, Board of Chiropractic;
- (e) For dentistry and dental hygiene, Board of Dentistry;
- (f) For optometry, Board of Optometry;
- (g) For massage therapy, Board of Massage Therapy;
- (h) For physical therapy, Board of Physical Therapy;
- (i) For pharmacy, Board of Pharmacy;
- (j) For audiology and speech-language pathology, Board of Audiology and Speech-Language Pathology;
- (k) For medical nutrition therapy, Board of Medical Nutrition Therapy;
- (l) For funeral directing and embalming, Board of Funeral Directing and Embalming;
- (m) For podiatry, Board of Podiatry;
- (n) For psychology, Board of Psychologists;
- (o) For veterinary medicine and surgery, Board of Veterinary Medicine and Surgery;
- (p) For mental health practice, Board of Mental Health Practice; and
- (q) For alcohol and drug counseling, Board of Alcohol and Drug Counseling.

(2) Any change made by the Legislature of the names of boards listed in this section shall not change the membership of such boards or affect the validity of any action taken by or the status of any action pending before any

of such boards. Any such board newly named by the Legislature shall be the direct and only successor to the board as previously named.

Sec. 6. Section 71-162, Revised Statutes Cumulative Supplement, 2006, is amended to read:

71-162 (1) It is the intent of the Legislature that the revenue to cover the cost of the credentialing system administered by the department is to be derived from General Funds, cash funds, federal funds, gifts, grants, or fees from individuals or entities seeking credentials. The credentialing system includes the totality of the credentialing infrastructure and the process of issuance and renewal of credentials, examinations, inspections, investigations, continuing competency, compliance assurance, and the credentialing review process for the following individuals and entities that provide health services and health-related services:

(a) Individuals in the practice of acupuncture; advanced practice nursing; alcohol and drug counseling; asbestos abatement, inspection, project design, and training; athletic training; audiology; speech-language pathology; chiropractic; dentistry; dental hygiene; environmental health; hearing aid instrument dispensing and fitting; lead-based paint abatement, inspection, project design, and training; medical nutrition therapy; medical radiography; medication aide services; medicine and surgery; mental health practice; nursing; nursing assistant or paid dining assistant services; nursing home administration; occupational therapy; optometry; osteopathic medicine; perfusion; pharmacy; physical therapy; podiatry; psychology; radon detection, measurement, and mitigation; respiratory care; social work; swimming pool operation; veterinary medicine and surgery; water system operation; constructing or decommissioning water wells and installing water well pumps and pumping equipment; and

(b) Individuals in the practice of and entities in the business of body art; cosmetology; electrology; emergency medical services; esthetics; funeral directing and embalming; massage therapy; and nail technology.

(2) The department shall determine the cost of the credentialing system for such individuals and entities by calculating the total of the base costs, the variable costs, and any adjustments as provided in sections 71-162.01 to 71-162.03.

(3) When fees are to be established pursuant to section 71-162.04 for individuals or entities other than individuals in the practice of constructing or decommissioning water wells and installing water well pumps and pumping equipment, the department, upon recommendation of the appropriate board if applicable, shall base the fees on the cost of the credentialing system and shall include usual and customary cost increases, a reasonable reserve, and the cost of any new or additional credentialing activities. For individuals in the practice of constructing or decommissioning water wells and installing water well pumps and pumping equipment, the Water Well Standards and Contractors' Licensing Board shall establish the fees as otherwise provided in this subsection. All such fees shall be collected as provided in section 71-163.

Sec. 7. Section 71-168, Revised Statutes Cumulative Supplement, 2006, is amended to read:

71-168 (1) The department shall enforce the Uniform Licensing Law and for that purpose shall make necessary investigations. Every credentialed person listed under subsection (4) of this section and every member of a professional board shall furnish the department such evidence as he or she may have relative to any alleged violation which is being investigated.

(2) Every credentialed person listed under subsection (4) of this section shall report to the department the name of every person without a credential that he or she has reason to believe is engaged in practicing any profession for which a credential is required by the Uniform Licensing Law. The department may, along with the Attorney General and other law enforcement agencies, investigate such reports or other complaints of unauthorized practice. The professional board may issue an order to cease and desist the unauthorized practice of such profession as a measure to obtain compliance with the applicable credentialing requirements by the person prior to referral of the matter to the Attorney General for action. Practice of such profession without a credential after receiving a cease and desist order is a Class III felony.

(3) Any credentialed person listed under subsection (4) of this section who is required to file a report of loss or theft of a controlled substance to the federal Drug Enforcement Administration shall provide a copy of such report to the department.

(4) Every credentialed person regulated under the Advanced Practice Registered Nurse Licensure Act, the Certified Registered Nurse Anesthetist Act, the Clinical Nurse Specialist Practice Act, the Emergency Medical

Services Act, the Licensed Practical Nurse-Certified Act, the Nebraska Certified Nurse Midwifery Practice Act, the Nebraska Cosmetology Act, the Nurse Practice Act, the Nurse Practitioner Act, the Occupational Therapy Practice Act, the Uniform Controlled Substances Act, the Uniform Licensing Law except pharmacist interns and pharmacy technicians, the Wholesale Drug Distributor Licensing Act, or sections 71-3702 to 71-3715, 71-4701 to 71-4719, or 71-6053 to 71-6068 shall, within thirty days of an occurrence described in this subsection, report to the department in such manner and form as the department may require by rule and regulation whenever he or she:

(a) Has first-hand knowledge of facts giving him or her reason to believe that any person in his or her profession has committed acts indicative of gross incompetence, a pattern of negligent conduct as defined in subdivision (5)(e) of section 71-147, or unprofessional conduct, may be practicing while his or her ability to practice is impaired by alcohol, controlled substances, narcotic drugs, or physical, mental, or emotional disability, or has otherwise violated such regulatory provisions governing the practice of the profession;

(b) Has first-hand knowledge of facts giving him or her reason to believe that any person in another profession regulated under such regulatory provisions has committed acts indicative of gross incompetence or may be practicing while his or her ability to practice is impaired by alcohol, controlled substances, narcotic drugs, or physical, mental, or emotional disability. The requirement to file a report under subdivision (a) or (b) of this subsection shall not apply (i) to the spouse of the person, (ii) to a practitioner who is providing treatment to such person in a practitioner-patient relationship concerning information obtained or discovered in the course of treatment unless the treating practitioner determines that the condition of the person may be of a nature which constitutes a danger to the public health and safety by the person's continued practice, or (iii) when a credentialed person who is chemically impaired enters the Licensee Assistance Program authorized by section 71-172.01 except as provided in such section; or

(c) Has been the subject of any of the following actions:

(i) Loss of privileges in a hospital or other health care facility due to alleged incompetence, negligence, unethical or unprofessional conduct, or physical, mental, or chemical impairment or the voluntary limitation of privileges or resignation from staff of any health care facility when that occurred while under formal or informal investigation or evaluation by the facility or a committee of the facility for issues of clinical competence, unprofessional conduct, or physical, mental, or chemical impairment;

(ii) Loss of employment due to alleged incompetence, negligence, unethical or unprofessional conduct, or physical, mental, or chemical impairment;

(iii) Adverse judgments, settlements, or awards arising out of professional liability claims, including settlements made prior to suit in which the patient releases any professional liability claim against the credentialed person, or adverse action by an insurance company affecting professional liability coverage. The department may define by rule and regulation what constitutes a settlement that would be reportable when a credentialed person refunds or reduces a fee or makes no charge for reasons related to a patient or client complaint other than costs;

(iv) Denial of a credential or other form of authorization to practice by any state, territory, or jurisdiction, including any military or federal jurisdiction, due to alleged incompetence, negligence, unethical or unprofessional conduct, or physical, mental, or chemical impairment;

(v) Disciplinary action against any credential or other form of permit he or she holds taken by another state, territory, or jurisdiction, including any federal or military jurisdiction, the settlement of such action, or any voluntary surrender of or limitation on any such credential or other form of permit;

(vi) Loss of membership in a professional organization due to alleged incompetence, negligence, unethical or unprofessional conduct, or physical, mental, or chemical impairment; or

(vii) Conviction of any misdemeanor or felony in this or any other state, territory, or jurisdiction, including any federal or military jurisdiction.

(5) A report submitted by a professional liability insurance company on behalf of a credentialed person shall be sufficient to satisfy the credentialed person's reporting requirement under subsection (4) of this section.

(6) A report made to the department under this section shall be confidential and treated in the same manner as complaints and investigative

files under subsection (7) of section 71-168.01. Any person making a report to the department under this section except those self-reporting shall be completely immune from criminal or civil liability of any nature, whether direct or derivative, for filing a report or for disclosure of documents, records, or other information to the department under this section. Persons who are members of committees established under the Patient Safety Improvement Act and sections 25-12,123, 71-2046 to 71-2048, and 71-7901 to 71-7903 or witnesses before such committees shall not be required to report such activities. Any person who is a witness before a committee established under such sections shall not be excused from reporting matters of first-hand knowledge that would otherwise be reportable under this section only because he or she attended or testified before such committee. Documents from original sources shall not be construed as immune from discovery or use in actions under subsection (4) of this section.

Sec. 8. Sections 8 to 19 of this act shall be known and may be cited as the Perfusion Practice Act.

Sec. 9. The Legislature finds and declares that the public interest requires the regulation of the practice of perfusion and the establishment of clear licensure standards for perfusionists and that the health and welfare of the residents of the State of Nebraska will be protected by identifying to the public those individuals who are qualified and legally authorized to practice perfusion.

Sec. 10. For purposes of the Perfusion Practice Act:

(1) Board means the Board of Medicine and Surgery;

(2) Committee means the Perfusionist Committee created under section 19 of this act;

(3) Extracorporeal circulation means the diversion of a patient's blood through a heart-lung machine or a similar device that assumes the functions of the patient's heart, lungs, kidney, liver, or other organs;

(4) Perfusion means the functions necessary for the support, treatment, measurement, or supplementation of the cardiovascular, circulatory, and respiratory systems or other organs, or a combination of such activities, and to ensure the safe management of physiologic functions by monitoring and analyzing the parameters of the systems under an order and under the supervision of a licensed physician, including:

(a) The use of extracorporeal circulation, long-term cardiopulmonary support techniques including extracorporeal carbon dioxide removal and extracorporeal membrane oxygenation, and associated therapeutic and diagnostic technologies;

(b) Counterpulsation, ventricular assistance, autotransfusion, blood conservation techniques, myocardial and organ preservation, extracorporeal life support, and isolated limb perfusion;

(c) The use of techniques involving blood management, advanced life support, and other related functions; and

(d) In the performance of the acts described in subdivisions (a) through (c) of this subdivision:

(i) The administration of:

(A) Pharmacological and therapeutic agents; and

(B) Blood products or anesthetic agents through the extracorporeal circuit or through an intravenous line as ordered by a physician;

(ii) The performance and use of:

(A) Anticoagulation monitoring and analysis;

(B) Physiologic monitoring and analysis;

(C) Blood gas and chemistry monitoring and analysis;

(D) Hematologic monitoring and analysis;

(E) Hypothermia and hyperthermia;

(F) Hemoconcentration and hemodilution; and

(G) Hemodialysis; and

(iii) The observation of signs and symptoms related to perfusion services, the determination of whether the signs and symptoms exhibit abnormal characteristics, and the implementation of appropriate reporting, clinical perfusion protocols, or changes in, or the initiation of, emergency procedures; and

(5) Perfusionist means a person who is licensed to practice perfusion pursuant to the Perfusion Practice Act.

Sec. 11. After the effective date of this act, no person shall practice perfusion, whether or not compensation is received or expected, unless the person holds a license to practice perfusion under the Perfusion Practice Act, except that nothing in the act shall be construed to:

(1) Prohibit any person credentialed to practice under any other law from engaging in the practice for which he or she is credentialed;

(2) Prohibit any student enrolled in a bona fide perfusion training

program recognized by the board from performing those duties which are necessary for the student's course of study, if the duties are performed under the supervision and direction of a perfusionist who is on duty and immediately available in the assigned patient care area; or

(3) Prohibit any person from practicing perfusion within the scope of his or her official duties when employed by an agency, bureau, or division of the federal government, serving in the Armed Forces or the Public Health Service of the United States, or employed by the Veterans Administration.

Sec. 12. To be eligible to be licensed as a perfusionist, an applicant shall fulfill the following requirements:

(1) Submit a complete application to the department as required under the Uniform Licensing Law;

(2) Pay the fee established and collected as provided in sections 71-162 to 71-162.05;

(3) Submit evidence of successful completion of a perfusion education program with standards established by the Accreditation Committee for Perfusion Education and approved by the Commission on Accreditation of Allied Health Education Programs or a program with substantially equivalent education standards approved by the board; and

(4) Submit evidence of successful completion of the certification examinations offered by the American Board of Cardiovascular Perfusion, or its successor, or a substantially equivalent examination approved by the board.

Sec. 13. The board may waive the education and examination requirements under section 12 of this act for an applicant who:

(1) Within one hundred eighty days after the effective date of this act, submits evidence satisfactory to the board that he or she has been operating cardiopulmonary bypass systems for cardiac surgical patients as his or her primary function in a licensed health care facility for at least two of the last ten years prior to the effective date of this act;

(2) Submits evidence of holding a current certificate as a Certified Clinical Perfusionist issued by the American Board of Cardiovascular Perfusion, or its successor; or

(3) Submits evidence of holding a credential as a perfusionist issued by another state or possession of the United States or the District of Columbia which has standards substantially equivalent to those of this state.

Sec. 14. The department shall issue a temporary license to a person who has applied for licensure pursuant to the Perfusion Practice Act and who, in the judgment of the department, with the recommendation of the board, is eligible for examination. An applicant with a temporary license may practice only under the direct supervision of a perfusionist. The board may adopt and promulgate rules and regulations governing such direct supervision which do not require the immediate physical presence of the supervising perfusionist. A temporary license shall expire one year after the date of issuance and may be renewed for a subsequent one-year period, subject to the rules and regulations adopted under the act. A temporary license shall be surrendered to the department upon its expiration.

Sec. 15. Each perfusionist shall, in the period since his or her license was issued or last renewed, complete continuing competency activities as required by the board pursuant to section 71-161.09 as a prerequisite for the licensee's next subsequent license renewal.

Sec. 16. No person shall use the title Perfusionist, the abbreviation LP, or any other title, designation, words, letters, abbreviations, or insignia indicating the practice of perfusion unless licensed to practice perfusion.

Sec. 17. The department, with the recommendation of the board, shall adopt and promulgate rules and regulations to carry out the Perfusion Practice Act.

Sec. 18. The board shall adopt and publish a code of ethics for perfusionists and maintain a record of every perfusionist licensed in this state which includes his or her place of business, place of residence, and license date and number.

Sec. 19. (1) There is created the Perfusionist Committee which shall review and make recommendations to the board regarding all matters relating to perfusionists that come before the board. Such matters shall include, but not be limited to, (a) applications for licensure, (b) perfusionist education, (c) scope of practice, (d) proceedings arising relating to disciplinary actions, (e) perfusionist licensure requirements, and (f) continuing competency. The committee shall be directly responsible to the board.

(2) The committee shall be appointed by the State Board of Health and shall be composed of two perfusionists and one physician who has clinical experience with perfusionists. The physician member may also be a member of the Board of Medicine and Surgery. The chairperson of the committee shall be

electd by a majority vote of the committee members. All appointments shall be for five-year terms, at staggered intervals. Members shall serve no more than two consecutive terms. Reappointments shall be made by the State Board of Health.

(3) The committee shall meet on a regular basis, and committee members shall, in addition to necessary traveling and lodging expenses, receive a per diem for each day actually engaged in the discharge of his or her duties, including compensation for the time spent in traveling to and from the place of conducting business. Traveling and lodging expenses shall be reimbursed on the same basis as provided in sections 81-1174 to 81-1177. The compensation shall not exceed fifty dollars per day and shall be determined by the committee with the approval of the department.

Sec. 20. Section 71-1,133, Reissue Revised Statutes of Nebraska, is amended to read:

71-1,133 For purposes of the Uniform Licensing Law, the practice of optometry means one or a combination of the following: ~~7 without the use of surgery;~~

(1) The examination of the human eye to diagnose, treat, or refer for consultation or treatment any abnormal condition of the human eye, ocular adnexa, or visual system;

(2) The employment of instruments, devices, pharmaceutical agents, ~~other than oral therapeutic agents used in the treatment of glaucoma,~~ and procedures intended for the purpose of investigating, examining, diagnosing, treating, managing, or correcting visual defects or abnormal conditions of the human eye, ocular adnexa, or visual system; ~~or for the removal of superficial eyelid, conjunctival, and corneal foreign bodies and the ordering of procedures and laboratory tests rational to the diagnosis of conditions or diseases of the human eye, ocular adnexa, or visual system; or~~

(3) The prescribing and application of lenses, devices containing lenses, prisms, contact lenses, ophthalmic devices, ~~excluding laser surgery,~~ orthoptics, vision training, pharmaceutical agents, and prosthetic devices to correct, relieve, or treat defects or abnormal conditions of the human eye, ocular adnexa, or visual system; ~~or~~

(4) The ordering of procedures and laboratory tests rational to the diagnosis or treatment of conditions or diseases of the human eye, ocular adnexa, or visual system; and

(5) The removal of superficial eyelid, conjunctival, and corneal foreign bodies.

The practice of optometry does not include the use of surgery, laser surgery, oral therapeutic agents used in the treatment of glaucoma, oral steroids, or oral immunosuppressive agents or the treatment of infantile/congenital glaucoma, which means the condition is present at birth.

Sec. 21. Section 71-1,134, Reissue Revised Statutes of Nebraska, is amended to read:

71-1,134 The practice of optometry ~~under sections 71-1,133 to 71-1,136.09~~ shall not be construed to:

(1) Include merchants or dealers who sell glasses as merchandise in an established place of business or who sell contact lenses from a prescription for contact lenses written by an optometrist or a person licensed to practice medicine and surgery and who do not profess to be optometrists or practice optometry; ~~as defined in section 71-1,133;~~

(2) Restrict, expand, or otherwise alter the scope of practice governed by other statutes; or

(3) Include the performance by an optometric assistant, under the supervision of a licensed optometrist, of duties prescribed in accordance with rules and regulations adopted and promulgated by the department, ~~with the upon~~ recommendation of the Board of Optometry.

Sec. 22. Section 71-1,135, Reissue Revised Statutes of Nebraska, is amended to read:

71-1,135 Every applicant for a license to practice optometry shall: (1) Present proof that he or she is a graduate of an accredited school or college of optometry; and (2) pass an examination approved by the Board of Optometry. ~~After August 25, 1989, the~~ The examination shall cover all subject matter included in the practice of optometry. ~~as defined in section 71-1,133 for applicants who have graduated from an accredited optometry school after such date. After October 1, 1997, the examination shall cover all subject matter included in the practice of optometry for applicants who have graduated from an accredited optometry school after such date.~~

Sec. 23. Section 71-1,135.02, Reissue Revised Statutes of Nebraska, is amended to read:

71-1,135.02 ~~(1)(a) No~~ (1) An optometrist licensed in this state, ~~except an optometrist who has been certified by the department prior to~~

April 30, 1987, or by another state with substantially equivalent requirements for certification as determined by the department upon recommendation of the Board of Optometry to use topical ocular pharmaceutical agents for diagnostic purposes prior to April 30, 1987, shall may use topical ocular pharmaceutical agents for diagnostic purposes authorized under subdivision (2) of section 71-1,133 unless if such person ~~(i)~~ submits to the board department the required fee and evidence of is certified by the department, with the recommendation of the Board of Optometry, as qualified to use topical ocular pharmaceutical agents for diagnostic purposes. Such certification shall require (a) satisfactory completion of a pharmacology course at an institution accredited by a regional or professional accrediting organization which is recognized by the United States Department of Education and approved by the Department of Health and Human Services Regulation and Licensure, (ii) passes board and passage of an examination approved by the department, and (iii) has been certified by the department upon the recommendation of the board as qualified to use topical ocular pharmaceutical agents for diagnostic purposes. board or (b) evidence provided by the optometrist of certification in another state for use of diagnostic pharmaceutical agents which is deemed by the board as satisfactory validation of such qualifications.

~~(b) The department may approve for certification pursuant to subdivision (1)(a)(i) of this section a pharmacology course if such course includes:~~

~~(i) A study of ocular anesthetics, mydriatics, cycloplegics, ocular toxicity of pharmaceutical agents, ocular allergies of ocular agents, and pharmacologic effects of ocular drug substances;~~

~~(ii) The consideration of the mechanism of action of anesthetics, cycloplegics, and mydriatics in human beings and the uses of such substances in the diagnosis of occurring ocular disorders;~~

~~(iii) At least one hundred hours of classroom education, clinical training, and examination; and~~

~~(iv) The correlation of the utilization of pharmaceutical agents and optical instrumentation and procedures.~~

~~(c) The department may approve for certification pursuant to subdivision (1)(a)(ii) of this section an examination if such examination is:~~

~~(i) Based upon the competencies taught in a pharmacology course; and~~

~~(ii) Administered by an institution accredited by a regional or professional accrediting organization which is recognized by the United States Department of Education and approved by the Department of Health and Human Services Regulation and Licensure.~~

~~(2)(a) No (2) An optometrist licensed in this state on or after April 30, 1987, shall may use topical ocular pharmaceutical agents for therapeutic purposes authorized under subdivision (2) or (3) of section 71-1,133 unless if such person ~~(i)~~ submits to the board department the required fee and evidence of is certified by the department, with the recommendation of the Board of Optometry, as qualified to use ocular pharmaceutical agents for therapeutic purposes, including the treatment of glaucoma. Such certification shall require (a) satisfactory completion of a minimum of one hundred hours since January 1, 1984, of which forty hours shall be classroom education and sixty hours shall be supervised clinical training as it applies to optometry with particular emphasis on which emphasizes the examination, diagnosis, and treatment of the eye, ocular adnexa, and visual system offered by a school or college approved by the department, (ii) passes board and passage of an examination approved by the department, (iii) has been certified by the department upon the recommendation of the board to use topical ocular pharmaceutical agents for therapeutic purposes, and (iv) has been certified by the department upon the recommendation of the board to use topical ocular pharmaceutical agents for diagnostic purposes. board or (b) evidence provided by the optometrist of certification in another state for the use of therapeutic pharmaceutical agents which is deemed by the board as satisfactory validation of such qualifications.~~

~~(b) The department may approve for certification pursuant to subdivision (2)(a)(i) of this section a therapeutic course or courses of instruction, from an institution accredited by a regional or professional accrediting organization which is recognized by the United States Department of Education, that have been completed after January 1, 1984. Such course or courses shall include, but not be limited to:~~

~~(i) Review of general pharmacology and therapeutics;~~

~~(ii) Review of ocular therapeutic pharmacology;~~

~~(iii) Diagnosis and treatment of diseases of the eye, ocular adnexa, and visual system;~~

~~(iv) Diagnosis of corneal disease and trauma including corneal~~

foreign bodies;

- ~~(v) Diagnosis and treatment of anterior segment eye diseases;~~
- ~~(vi) Clinical procedures related to the diagnosis and treatment of the eye, ocular adnexa, and visual system;~~
- ~~(vii) Ocular manifestations of systemic disease;~~
- ~~(viii) Review of systemic disease syndromes;~~
- ~~(ix) Ocular therapy including management of acute systemic emergencies; and~~
- ~~(x) Consultation criteria in ocular disease and trauma.~~

~~(3)(a) An optometrist who is licensed and certified to use pharmaceutical agents for therapeutic purposes on July 15, 1998, who graduated from an accredited school of optometry prior to January 1, 1996, shall complete the educational requirements relative to the treatment of glaucoma, as determined by the board, prior to January 1, 2000, and shall complete such educational requirements prior to treating glaucoma. Failure to complete such education prior to January 1, 2000, shall result in the revocation of the licensee's certification to use pharmaceutical agents for therapeutic purposes.~~

~~(b) An optometrist who applies for licensure on or after July 15, 1998, who graduated from an accredited school of optometry prior to January 1, 1996, shall complete the educational requirements relative to the treatment of glaucoma, as determined by the board, prior to being issued a license to practice optometry.~~

~~(c) An optometrist who graduated from an accredited school of optometry after January 1, 1996, shall be deemed to have met the educational requirements for certification to use pharmaceutical agents for therapeutic purposes which includes the treatment and management of glaucoma.~~

(3) After January 1, 2000, only an optometrist licensed in this state prior to April 30, 1987, may practice optometry without meeting the requirements and obtaining certification required by subsections (1) and (2) of this section.

Sec. 24. Section 71-1,135.04, Reissue Revised Statutes of Nebraska, is amended to read:

71-1,135.04 In issuing a license or renewal, the Board of Optometry shall state whether such person licensed in the practice of optometry has been certified to use pharmaceutical agents pursuant to section 71-1,135.02 and shall determine an appropriate means to further identify those persons who are certified in the diagnostic use of such agents ~~as provided in subdivision (2) of section 71-1,133 or the therapeutic use of such agents, as provided in subdivision (2) or (3) of section 71-1,133.~~

Sec. 25. Section 71-1,135.06, Reissue Revised Statutes of Nebraska, is amended to read:

71-1,135.06 ~~(1)~~ A licensed optometrist who administers or prescribes pharmaceutical agents for examination or for treatment shall provide the same standard of care to patients as that provided by a physician licensed in this state to practice medicine and surgery utilizing the same pharmaceutical agents for examination or treatment.

~~(2) A licensed optometrist who administers or prescribes pharmaceutical agents for the treatment of glaucoma shall provide the same standard of care to patients as that provided by a physician licensed in this state to practice medicine and surgery utilizing the same pharmaceutical agents for the examination and treatment of glaucoma.~~

Sec. 26. Section 71-1,136, Reissue Revised Statutes of Nebraska, is amended to read:

71-1,136 No school of optometry shall be approved by the Department of Health and Human Services Regulation and Licensure Board of Optometry as an accredited school unless the school is accredited by a regional or professional accrediting organization which is recognized by the United States Department of Education.

Sec. 27. Section 71-1,136.01, Reissue Revised Statutes of Nebraska, is amended to read:

71-1,136.01 Each Nebraska-licensed optometrist in active practice within the State of Nebraska shall, on or before August 1 of each even-numbered year, complete continuing competency activities as required by the Board of Optometry pursuant to section 71-161.09 as a prerequisite for the licensee's next subsequent license renewal. In addition to circumstances determined by the department to be beyond the credential holder's control pursuant to section 71-161.10, such circumstances shall include situations in which the credential holder was initially licensed within the twenty-six months immediately preceding the renewal date.

Sec. 28. Section 71-1,136.04, Reissue Revised Statutes of Nebraska, is amended to read:

71-1,136.04 No agencies of the state or its subdivisions administering relief, public assistance, public welfare assistance, or other health service under the laws of this state, including the public schools, shall in the performance of their duties, interfere with any patient's freedom of choice in the selection of practitioners licensed to perform examinations ~~for refractions or corrections~~ and provide treatment within the field for which their respective licenses entitle them to practice.

Sec. 29. Section 71-1,142, Revised Statutes Cumulative Supplement, 2006, as amended by section 344, Legislative Bill 296, One Hundredth Legislature, First Session, 2007, is amended to read:

71-1,142 For purposes of sections 71-1,142 to 71-1,151 and sections 31 to 38 of this act and elsewhere in the Uniform Licensing Law, unless the context otherwise requires:

(1) Practice of pharmacy means (a) the interpretation, evaluation, and implementation of a medical order, (b) the dispensing of drugs and devices, (c) drug product selection, (d) the administration of drugs or devices, (e) drug utilization review, (f) patient counseling, (g) the provision of pharmaceutical care, and (h) the responsibility for compounding and labeling of dispensed or repackaged drugs and devices, proper and safe storage of drugs and devices, and maintenance of proper records. The active practice of pharmacy means the performance of the functions set out in this subdivision by a pharmacist as his or her principal or ordinary occupation;

(2) Administer means to directly apply a drug or device by injection, inhalation, ingestion, or other means to the body of a patient or research subject;

(3) Administration means the act of (a) administering, (b) keeping a record of such activity, and (c) observing, monitoring, reporting, and otherwise taking appropriate action regarding desired effect, side effect, interaction, and contraindication associated with administering the drug or device;

(4) Board means the Board of Pharmacy;

(5) Caregiver means any person acting as an agent on behalf of a patient or any person aiding and assisting a patient;

(6) Chart order means an order for a drug or device issued by a practitioner for a patient who is in the hospital where the chart is stored or for a patient receiving detoxification treatment or maintenance treatment pursuant to section 28-412. Chart order does not include a prescription;

(7) Compounding means the preparation of components into a drug product (a) as the result of a practitioner's medical order or initiative occurring in the course of practice based upon the relationship between the practitioner, patient, and pharmacist or (b) for the purpose of, or as an incident to, research, teaching, or chemical analysis and not for sale or dispensing. Compounding includes the preparation of drugs or devices in anticipation of receiving medical orders based upon routine, regularly observed prescribing patterns;

(8) Delegated dispensing means the practice of pharmacy by which one or more pharmacists have jointly agreed, on a voluntary basis, to work in conjunction with one or more persons pursuant to sections 71-1,147.42 to 71-1,147.64 under a protocol which provides that such person may perform certain dispensing functions authorized by the pharmacist or pharmacists under certain specified conditions and limitations;

(9) Deliver or delivery means to actually, constructively, or attempt to transfer a drug or device from one person to another, whether or not for consideration;

(10) Department means the Division of Public Health of the Department of Health and Human Services;

(11) Device means an instrument, apparatus, implement, machine, contrivance, implant, in vitro reagent, or other similar or related article, including any component, part, or accessory, which is prescribed by a practitioner and dispensed by a pharmacist or other person authorized by law to do so;

(12) Dialysis drug or device distributor means a manufacturer or wholesaler who provides dialysis drugs, solutions, supplies, or devices, to persons with chronic kidney failure for self-administration at the person's home or specified address, pursuant to a prescription;

(13) Dialysis drug or device distributor worker means a person working for a dialysis drug or device distributor with a delegated dispensing permit who has completed the approved training and has demonstrated proficiency to perform the task or tasks of assembling, labeling, or delivering drugs or devices pursuant to a prescription;

(14) Dispense or dispensing means interpreting, evaluating, and implementing a medical order, including preparing and delivering a drug or

device to a patient or caregiver in a suitable container appropriately labeled for subsequent administration to, or use by, a patient. Dispensing includes (a) dispensing incident to practice, (b) dispensing pursuant to a delegated dispensing permit, (c) dispensing pursuant to a medical order, and (d) any transfer of a prescription drug or device to a patient or caregiver other than by administering;

(15) Distribute means to deliver a drug or device, other than by administering or dispensing;

(16) Facility means a health care facility as defined in section 71-413;

(17) Hospital has the same meaning as in section 71-419;

(18) Person means an individual, corporation, partnership, limited liability company, association, or other legal entity;

(19) Labeling means the process of preparing and affixing a label to any drug container or device container, exclusive of the labeling by a manufacturer, packer, or distributor of a nonprescription drug or commercially packaged legend drug or device. Any such label shall include all information required by federal and state law or regulation;

(20) Medical order means a prescription, a chart order, or an order for pharmaceutical care issued by a practitioner;

(21) Pharmaceutical care means the provision of drug therapy for the purpose of achieving therapeutic outcomes that improve a patient's quality of life. Such outcomes include (a) the cure of disease, (b) the elimination or reduction of a patient's symptomatology, (c) the arrest or slowing of a disease process, or (d) the prevention of a disease or symptomatology. Pharmaceutical care includes the process through which the pharmacist works in concert with the patient and his or her caregiver, physician, or other professionals in designing, implementing, and monitoring a therapeutic plan that will produce specific therapeutic outcomes for the patient;

(22) Pharmacist means any person who is licensed by the State of Nebraska to practice pharmacy;

(23) Pharmacy has the same meaning as in section 71-425;

(24) Drugs, medicines, and medicinal substances means (a) articles recognized in the official United States Pharmacopoeia, the Homeopathic Pharmacopoeia of the United States, the official National Formulary, or any supplement to any of them, (b) articles intended for use in the diagnosis, cure, mitigation, treatment, or prevention of diseases in humans or animals, (c) articles, except food, intended to affect the structure or any function of the body of a human or an animal, (d) articles intended for use as a component of any articles specified in subdivision (a), (b), or (c) of this subdivision, except any device or its components, parts, or accessories, and (e) prescription drugs or devices as defined in subdivision (31) of this section;

(25) Patient counseling means the verbal communication by a pharmacist, pharmacist intern, or practitioner, in a manner reflecting dignity and the right of the patient to a reasonable degree of privacy, of information to the patient or caregiver in order to improve therapeutic outcomes by maximizing proper use of prescription drugs and devices and also includes the duties set out in section 71-1,147.35;

(26) Pharmacist in charge means a pharmacist who is designated on a pharmacy license or designated by a hospital as being responsible for the practice of pharmacy in the pharmacy for which a pharmacy license is issued and who works within the physical confines of such pharmacy for a majority of the hours per week that the pharmacy is open for business averaged over a twelve-month period or thirty hours per week, whichever is less;

(27) Pharmacist intern means a person who meets the requirements of section 71-1,144;

(28) Pharmacy technician means an individual at least eighteen years of age who is a high school graduate or officially recognized by the State Department of Education as possessing the equivalent degree of education, who has never been convicted of any drug-related misdemeanor or felony, and who, under the written control procedures and guidelines of an employing pharmacy, may perform those functions which do not require professional judgment and which are subject to verification to assist a pharmacist in the practice of pharmacy; registered under sections 31 to 38 of this act;

(29) Practitioner means a certified registered nurse anesthetist, a certified nurse midwife, a dentist, an optometrist, a nurse practitioner, a physician assistant, a physician, a podiatrist, or a veterinarian;

(30) Prescribe means to issue a medical order;

(31) Prescription drug or device or legend drug or device means (a) a drug or device which is required under federal law to be labeled with one of the following statements prior to being dispensed or delivered: (i) Caution:

Federal law prohibits dispensing without prescription; (ii) Caution: Federal law restricts this drug to use by or on the order of a licensed veterinarian; or (iii) "Rx Only" or (b) a drug or device which is required by any applicable federal or state law to be dispensed pursuant only to a prescription or chart order or which is restricted to use by practitioners only;

(32) Prescription means an order for a drug or device issued by a practitioner for a specific patient, for emergency use, or for use in immunizations. Prescription does not include a chart order;

(33) Nonprescription drugs means nonnarcotic medicines or drugs which may be sold without a medical order and which are prepackaged for use by the consumer and labeled in accordance with the requirements of the laws and regulations of this state and the federal government;

(34) Public health clinic worker means a person in a public health clinic with a delegated dispensing permit who has completed the approved training and has demonstrated proficiency to perform the task of dispensing authorized refills of oral contraceptives pursuant to a written prescription;

(35) Public health clinic means the department, any county, city-county, or multicounty health department, or any private not-for-profit family planning clinic licensed as a health clinic as defined in section 71-416;

(36) Signature means the name, word, or mark of a person written in his or her own hand with the intent to authenticate a writing or other form of communication or a digital signature which complies with section 86-611 or an electronic signature;

(37) Supervision means the immediate personal guidance and direction by the licensed pharmacist on duty in the facility of the performance by a pharmacy technician of authorized activities or functions subject to verification by such pharmacist, except that when a pharmacy technician performs authorized activities or functions to assist a pharmacist on duty in the facility when the prescribed drugs or devices will be administered by a licensed staff member or consultant or by a licensed physician assistant to persons who are patients or residents of a facility, the activities or functions of such pharmacy technician shall only be subject to verification by a pharmacist on duty in the facility;

(38) Verification means the confirmation by a supervising pharmacist of the accuracy and completeness of the acts, tasks, or functions undertaken by a pharmacy technician to assist the pharmacist in the practice of pharmacy;

(39) Written control procedures and guidelines means the document prepared and signed by the pharmacist in charge and approved by the board which specifies the manner in which basic levels of competency of pharmacy technicians employed by the pharmacy are determined, the manner in which supervision is provided, the manner in which the functions of pharmacy technicians are verified, the maximum ratio of pharmacy technicians to one pharmacist used in the pharmacy, and guidelines governing the use of pharmacy technicians and the functions which they may perform;

(40) Medical gas distributor means a person who dispenses medical gases to a patient or ultimate user but does not include a person who manufactures medical gases or a person who distributes, transfers, delivers, dispenses, or sells medical gases to a person other than a patient or ultimate user;

(41) Facsimile means a copy generated by a system that encodes a document or photograph into electrical signals, transmits those signals over telecommunications lines, and reconstructs the signals to create an exact duplicate of the original document at the receiving end;

(42) Electronic signature has the same definition found in section 86-621; and

(43) Electronic transmission means transmission of information in electronic form. Electronic transmission may include computer-to-computer transmission or computer-to-facsimile transmission.

Sec. 30. Section 71-1,147, Reissue Revised Statutes of Nebraska, is amended to read:

71-1,147 (1) Except as provided for pharmacy technicians in ~~section 71-1,147.33~~ sections 31 to 38 of this act and for individuals authorized to dispense under a delegated dispensing permit, no person other than a licensed pharmacist, a pharmacist intern, or a practitioner with a pharmacy license shall provide pharmaceutical care, compound and dispense drugs or devices, or dispense pursuant to a medical order. Notwithstanding any other provision of law to the contrary, a pharmacist or pharmacist intern may dispense drugs or devices pursuant to a medical order of a practitioner authorized to prescribe in another state if such practitioner could be authorized to prescribe such drugs or devices in this state.

(2) Except as provided for pharmacy technicians in ~~section~~

~~71-1,147.33~~ sections 31 to 38 of this act and for individuals authorized to dispense under a delegated dispensing permit, it shall be unlawful for any person to permit or direct a person who is not a pharmacist intern, a licensed pharmacist, or a practitioner with a pharmacy license to provide pharmaceutical care, compound and dispense drugs or devices, or dispense pursuant to a medical order.

(3) It shall be unlawful for any person to coerce or attempt to coerce a pharmacist to enter into a delegated dispensing agreement or to supervise any pharmacy technician for any purpose or in any manner contrary to the professional judgment of the pharmacist. Violation of this subsection by a health care professional regulated pursuant to the provisions of Chapter 71 shall be considered an act of unprofessional conduct. A violation of this subsection by a facility shall be prima facie evidence in an action against the license of the facility pursuant to the Health Care Facility Licensure Act. Any pharmacist subjected to coercion or attempted coercion pursuant to this subsection has a cause of action against the person and may recover his or her damages and reasonable attorney's fees.

(4) Violation of this section by an unlicensed person shall be a Class III misdemeanor.

Sec. 31. (1) All pharmacy technicians employed by a facility licensed under the Health Care Facility Licensure Act shall be registered with the Pharmacy Technician Registry created in section 34 of this act.

(2) To register as a pharmacy technician, an individual shall (a) be at least eighteen years of age, (b) be a high school graduate or be officially recognized by the State Department of Education as possessing the equivalent degree of education, (c) have never been convicted of any nonalcohol, drug-related misdemeanor or felony, (d) file an application with the department, and (e) pay the applicable fee.

(3) A pharmacy technician shall apply for registration as provided in this section within thirty days after being hired by a pharmacy or facility. Pharmacy technicians employed in that capacity on the effective date of this act shall apply for registration within thirty days after the effective date of this act.

Sec. 32. (1) A pharmacy technician shall only perform tasks which do not require professional judgment and which are subject to verification to assist a pharmacist in the practice of pharmacy.

(2) The functions and tasks which shall not be performed by pharmacy technicians include, but are not limited to:

(a) Receiving oral medical orders from a practitioner or his or her agent;

(b) Providing patient counseling;

(c) Performing any evaluation or necessary clarification of a medical order or performing any functions other than strictly clerical functions involving a medical order;

(d) Supervising or verifying the tasks and functions of pharmacy technicians;

(e) Interpreting or evaluating the data contained in a patient's record maintained pursuant to section 71-1,147.35;

(f) Releasing any confidential information maintained by the pharmacy;

(g) Performing any professional consultations; and

(h) Drug product selection, with regard to an individual medical order, in accordance with the Nebraska Drug Product Selection Act.

(3) The director shall, with the recommendation of the board, waive any of the limitations in subsection (2) of this section for purposes of a scientific study of the role of pharmacy technicians approved by the board. Such study shall be based upon providing improved patient care or enhanced pharmaceutical care. Any such waiver shall state the length of the study and shall require that all study data and results be made available to the board upon the completion of the study. Nothing in this subsection requires the board to approve any study proposed under this subsection.

Sec. 33. (1) A pharmacy employing pharmacy technicians shall be responsible for the supervision and performance of the pharmacy technicians.

(2) The pharmacist in charge shall be responsible for the practice of pharmacy and the establishment of written control procedures and guidelines governing the qualifications, onsite training, functions, supervision, and verification of the performance of pharmacy technicians. The supervision of such technicians at the place of employment shall be performed by the licensed pharmacist who is on duty in the facility with the pharmacy technicians.

(3)(a) Each pharmacy shall document, in a manner and method specified in the written control procedures and guidelines, the basic competence of the pharmacy technician prior to performance of tasks and

functions by such technician. Such basic competence shall include, but not be limited to:

- (i) Basic pharmaceutical nomenclature;
- (ii) Metric system measures, both liquid and solid;
- (iii) The meaning and use of Roman numerals;
- (iv) Abbreviations used for dosages and directions to patients;
- (v) Basic medical terms, including terms relating to ailments, diseases, or infirmities;
- (vi) The use and operation of automated dispensing and record-keeping systems if used by the employing pharmacy;
- (vii) Applicable statutes, rules, and regulations governing the preparation, compounding, dispensing, and distribution of drugs or devices, record keeping with regard to such functions, and the employment, use, and functions of pharmacy technicians; and
- (viii) The contents of the written control procedures and guidelines.

(b) Written control procedures and guidelines shall specify the functions that pharmacy technicians may perform in the employing pharmacy. The written control procedures and guidelines shall specify the means used by the employing pharmacy to verify that the prescribed drug or device, the dosage form, and the directions provided to the patient or caregiver conform to the medical order authorizing the drug or device to be dispensed.

(c) The written control procedures and guidelines shall specify the manner in which the verification made prior to dispensing is documented.

(4) Each pharmacy or facility shall, before using pharmacy technicians, file with the board a copy of its written control procedures and guidelines and receive approval of its written control procedures and guidelines from the board. The board shall, within ninety days after the filing of such written control procedures and guidelines, review and either approve or disapprove them. The board shall notify the pharmacy or facility of the approval or disapproval. The board or its representatives shall have access to the approved written control procedures and guidelines upon request. Any written control procedures and guidelines for supportive pharmacy personnel that were filed by a pharmacy and approved by the board prior to the effective date of this act shall be deemed to be approved and to apply to pharmacy technicians.

Sec. 34. (1) The Pharmacy Technician Registry is created. The department shall list each pharmacy technician registration in the registry. A listing in the registry shall be valid for the term of the registration and upon renewal unless such listing is refused renewal or is removed as provided in section 35 of this act.

(2) The registry shall contain the following information on each individual who meets the conditions set out in section 31 of this act: (a) The individual's full name; (b) information necessary to identify the individual; (c) any conviction of a nonalcohol, drug-related felony or misdemeanor reported to the department; and (d) any other information as the department may require by rule and regulation.

Sec. 35. (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 sections 31 to 38 of this act 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 71-172.01.

Sec. 36. (1) If a pharmacy technician performs functions requiring professional judgment and licensure as a pharmacist, performs functions not specified under approved written control procedures and guidelines, or performs functions without supervision and such acts are known to the pharmacist supervising the pharmacy technician or the pharmacist in charge or are of such a nature that they should have been known to a reasonable person, such acts may be considered acts of unprofessional conduct on the

part of the pharmacist supervising the pharmacy technician or the pharmacist in charge pursuant to section 71-147, and disciplinary measures may be taken against such pharmacist supervising the pharmacy technician or the pharmacist in charge pursuant to the Uniform Licensing Law.

(2) Acts described in subsection (1) of this section may be grounds for the department, with the recommendation of the board, to apply to the district court in the judicial district in which the pharmacy is located for an order to cease and desist from the performance of any unauthorized acts. On or at any time after such application the court may, in its discretion, issue an order restraining such pharmacy or its agents or employees from the performance of unauthorized acts. After a hearing the court shall either grant or deny the application. Such order shall continue until the court, after a hearing, finds the basis for such order has been removed.

Sec. 37. A person whose registration has been denied, refused renewal, removed, or suspended from the Pharmacy Technician Registry may reapply for registration or for lifting of the disciplinary sanction at any time in accordance with the rules and regulations adopted and promulgated by the department.

Sec. 38. A pharmacy technician shall report first-hand knowledge of facts giving him or her reason to believe that any person in his or her profession, or any person in another profession under the regulatory provisions of the department, may be practicing while his or her ability to practice is impaired by alcohol, controlled substances, or narcotic drugs. A report made to the department under this section shall be confidential. Any person making a report to the department under this section, except for those self-reporting, shall be completely immune from criminal or civil liability of any nature, whether direct or derivative, for filing a report or for disclosure of documents, records, or other information to the department under this section. The immunity granted by this section shall not apply to any person causing damage or injury by his or her willful, wanton, or grossly negligent act of commission or omission.

Sec. 39. For purposes of sections 39 to 42 of this act:

(1) Activities of daily living has the definition found in section 71-6602;

(2) Attendant services means services provided to nonmedically fragile persons, including hands-on assistance with activities of daily living, transfer, grooming, medication reminders, and similar activities;

(3) Companion services means the provision of companionship and assistance with letter writing, reading, and similar activities;

(4) Homemaker services means assistance with household tasks, including, but not limited to, housekeeping, personal laundry, shopping, incidental transportation, and meals;

(5) In-home personal services means attendant services, companion services, and homemaker services that do not require the exercise of medical or nursing judgment provided to a person in his or her residence to enable the person to remain safe and comfortable in such residence;

(6) In-home personal services agency means an entity that provides or offers to provide in-home personal services for compensation by employees of the agency or by persons with whom the agency has contracted to provide such services. In-home personal services agency does not include a local public health department as defined in section 71-1626, a health care facility as defined in section 71-413, a health care service as defined in section 71-415, programs supported by the federal Corporation for National and Community Service, an unlicensed home care registry or similar entity that screens and schedules independent contractors as caregivers for persons, or an agency that provides only housecleaning services. A home health agency may be an in-home personal services agency; and

(7) In-home personal services worker means a person who meets the requirements of section 40 of this act and provides in-home personal services.

Sec. 40. An in-home personal services worker:

(1) Shall be at least eighteen years of age;

(2) Shall have good moral character;

(3) Shall not have been convicted of a crime under the laws of Nebraska or another jurisdiction, the penalty for which is imprisonment for a period of more than one year and which crime is rationally related to the person's fitness or capacity to act as an in-home personal services worker;

(4) Shall have no adverse findings on the Adult Protective Services Central Registry, the central register created in section 28-718, the Medication Aide Registry, the Nurse Aide Registry, or the central registry maintained by the sex offender registration and community notification division of the Nebraska State Patrol pursuant to section 29-4004;

(5) Shall be able to speak and understand the English language or

the language of the person for whom he or she is providing in-home personal services; and

(6) Shall have training sufficient to provide the requisite level of in-home personal services offered.

Sec. 41. An in-home personal services agency shall employ or contract with only persons who meet the requirements of section 40 of this act to provide in-home personal services. The in-home personal services agency shall perform or cause to be performed a criminal history record information check on each in-home personal services worker and a check of his or her driving record as maintained by the Department of Motor Vehicles or by any other state which has issued an operator's license to the in-home personal services worker, when driving is a service provided by the in-home personal services worker, and shall maintain documentation of such checks in its records for inspection at its place of business.

Sec. 42. Sections 39 to 41 of this act do not apply to the performance of health maintenance activities by designated care aides pursuant to section 71-1,132.30 or to persons who provide personal assistant services, respite care or habilitation services, or aged and disabled services.

Sec. 43. Section 71-415, Reissue Revised Statutes of Nebraska, is amended to read:

71-415 Health care service means an adult day service, a home health agency, a hospice or hospice service, or a respite care service. Health care service does not include an in-home personal services agency as defined in section 39 of this act.

Sec. 44. Section 71-6720, Reissue Revised Statutes of Nebraska, is amended to read:

71-6720 (1) The purposes of the Medication Aide Act are to ensure the health, safety, and welfare of the public by providing for the accurate, cost-effective, efficient, and safe utilization of medication aides to assist in the administration of medications by ~~(1)~~ (a) competent individuals, ~~(2)~~ (b) caretakers who are parents, foster parents, family, friends or legal guardians, and ~~(3)~~ (c) licensed health care professionals.

(2) The act applies to all settings in which medications are administered except the home, unless the in-home administration of medication is - The act does apply to medication administered in the home when provided through a licensed home health agency or licensed or certified home and community-based provider.

(3) The act does not apply to the provision of reminders to persons to self-administer medication or assistance to persons in the delivery of nontherapeutic topical applications by in-home personal services workers. For purposes of this subsection, in-home personal services worker has the definition found in section 39 of this act.

Sec. 45. If any section in this act or any part of any section is declared invalid or unconstitutional, the declaration shall not affect the validity or constitutionality of the remaining portions.

Sec. 46. Original sections 71-1,133, 71-1,134, 71-1,135, 71-1,135.02, 71-1,135.04, 71-1,135.06, 71-1,136, 71-1,136.01, 71-1,136.04, 71-1,147, 71-415, and 71-6720, Reissue Revised Statutes of Nebraska, sections 71-107, 71-110, 71-112, 71-162, and 71-168, Revised Statutes Cumulative Supplement, 2006, and sections 71-101, 71-102, and 71-1,142, Revised Statutes Cumulative Supplement, 2006, as amended by sections 296, 297, and 344, respectively, Legislative Bill 296, One Hundredth Legislature, First Session, 2007, are repealed.

Sec. 47. The following sections are outright repealed: Sections 71-1,135.03, 71-1,135.05, and 71-1,147.34, Reissue Revised Statutes of Nebraska, and section 71-1,147.33, Revised Statutes Cumulative Supplement, 2006.