

LEGISLATIVE BILL 828

Approved by the Governor May 27, 1999

Introduced by Jensen, 20

AN ACT relating to health and human services; to amend sections 33-151, 33-152, 43-2606, 44-2847, 59-1617, 71-105, 71-107, 71-111, 71-112, 71-112.01, 71-112.03, 71-113, 71-114, 71-115.01, 71-116, 71-117, 71-118, 71-119, 71-120, 71-122, 71-123, 71-124, 71-124.01, 71-128, 71-129, 71-131, 71-132, 71-133, 71-138, 71-139, 71-139.01, 71-140, 71-143, 71-144, 71-161.03, 71-161.04, 71-161.07, 71-161.09, 71-161.13, 71-161.14, 71-161.15, 71-161.19, 71-161.20, 71-168.01, 71-170, 71-171.01, 71-175, 71-175.01, 71-176.01, 71-176.03, 71-179, 71-179.01, 71-180, 71-183.01, 71-185, 71-185.01, 71-185.02, 71-186, 71-193.04, 71-193.14, 71-193.18, 71-193.20, 71-193.22, 71-1,104, 71-1,104.06, 71-1,105, 71-1,106, 71-1,107.01, 71-1,107.02, 71-1,107.04, 71-1,107.05, 71-1,107.09, 71-1,107.10, 71-1,107.11, 71-1,107.13, 71-1,107.14, 71-1,107.16, 71-1,107.25, 71-1,136.02, 71-1,136.03, 71-1,136.09, 71-1,137, 71-1,139.01, 71-1,140, 71-1,144.01, 71-1,144.04, 71-1,145, 71-1,146, 71-1,147.02, 71-1,147.10, 71-1,147.11, 71-1,147.18, 71-1,147.19, 71-1,147.20, 71-1,147.21, 71-1,147.22, 71-1,147.24, 71-1,147.25, 71-1,147.29, 71-1,147.30, 71-1,147.31, 71-1,147.38, 71-1,152.01, 71-1,171, 71-1,186, 71-1,191, 71-1,192, 71-1,199, 71-1,200, 71-1,201, 71-1,206.02, 71-1,206.11, 71-1,227, 71-1,238, 71-1,278, 71-1,281, 71-1,281.01, 71-1,286, 71-1,298, 71-1,335, 71-1,337, 71-1301, 71-1305, 71-1333.01, 71-1731, 71-1735, 71-1736, 71-1737, 71-1740, 71-1743, 71-1758, 71-2407, 71-2408, 71-2409, 71-2413, 71-2416, 71-2803, 71-2804, 71-2807, 71-2809, 71-4715, 71-6228, and 71-7405, Reissue Revised Statutes of Nebraska, sections 28-407, 71-101, 71-108, 71-110, 71-121, 71-121.01, 71-141, 71-155, 71-161.10, 71-162, 71-168, 71-171.02, 71-174.01, 71-1,103, 71-1,135, 71-1,135.02, 71-1,135.03, 71-1,135.04, 71-1,136.01, 71-1,139, 71-1,142, 71-1,147.45, 71-1,154, 71-1,237, 71-1,243, 71-1,283, 71-1,288, 71-1,334, 71-1730, 71-2601, and 71-5403, Revised Statutes Supplement, 1998, and section 71-1,107.30, Reissue Revised Statutes of Nebraska, as amended by section 4, Legislative Bill 379, Ninety-sixth Legislature, First Session, 1999; to change provisions relating to controlled substances registration requirements, child care and school-age-care programs, credentials issued under the Uniform Licensing Law, department records, boards of examiners, disciplinary action, liability, confidentiality, physician assistants, and reports by insurers; to provide, change, and eliminate definitions; to state intent; to provide powers and duties; to provide and change penalty provisions; to eliminate obsolete fee disbursement provisions; to harmonize provisions; to repeal the original sections; and to outright repeal sections 33-150, 71-1741, and 71-1742, Reissue Revised Statutes of Nebraska.

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

Section 1. Section 28-407, Revised Statutes Supplement, 1998, is amended to read:

28-407. (1) Every person who manufactures, prescribes, distributes, administers, or dispenses any controlled substance within this state or who proposes to engage in the manufacture, prescribing, administering, distribution, or dispensing of any controlled substance within this state shall obtain a registration issued by the department, except that on and after January 1, 2000, health care providers credentialed by the department and facilities licensed by the department shall not be required to obtain a separate Nebraska controlled substances registration upon providing proof of a Federal Controlled Substances Registration to the department. Federal Controlled Substances Registration numbers obtained under this section shall not be public information but may be shared by the department for investigative and regulatory purposes if necessary and only under appropriate circumstances to ensure against any unauthorized access to such information. in accordance with the rules and regulations adopted and promulgated.

(2) The following persons shall not be required to register and may lawfully possess controlled substances under the provisions of the Uniform Controlled Substances Act:

(a) An agent, or an employee thereof, of any practitioner,

registered manufacturer, distributor, or dispenser of any controlled substance if such agent is acting in the usual course of his or her business or employment;

(b) A common or contract carrier or warehouse keeper, or an employee thereof, whose possession of any controlled substance is in the usual course of his or her business or employment; and

(c) An ultimate user or a person in possession of any controlled substance pursuant to a lawful order of a practitioner.

(3) A separate registration shall be required at each principal place of business of professional practice where the applicant manufactures, distributes, or dispenses controlled substances, except that no registration shall be required in connection with the placement of an emergency box within an institution pursuant to the provisions of the Emergency Box Drug Act.

(4) The department is authorized to inspect the establishment of a registrant or applicant for registration in accordance with the rules and regulations promulgated.

Sec. 2. Section 33-151, Reissue Revised Statutes of Nebraska, is amended to read:

33-151. All money now in the state treasury to the credit of the ~~special boards, bureaus, divisions, and commissions enumerated in section 33-150~~ state boards of medicine and surgery, chiropractic, respiratory care, dentistry, including fees from dental hygiene, medical nutrition therapy, athletic training, massage therapy, optometry, pharmacy, funeral directing and embalming, including fees received from funeral establishments and branch establishments, as defined in section 71-1301, as well as funeral directors and embalmers, podiatry, veterinary medicine, and mental health practice, the Board of Occupational Therapy Practice, the Board of Cosmetology Examiners, the Board of Barber Examiners, the Board of Nursing, the State Real Estate Commission, the Board of 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 in this section, and all money collected by each of the special such boards, bureaus, divisions, or commissions during any biennium, except the percentage credited from each and deposited in the General Fund as provided in such section, if and when specifically appropriated by the Legislature for that purpose, are made immediately available for the use and benefit of such ~~special~~ board, bureau, division, or commission. This section shall not be construed to apply to the fees inuring to the Nebraska Brand Inspection and Theft Prevention Fund.

Sec. 3. Section 33-152, Reissue Revised Statutes of Nebraska, is amended to read:

33-152. The Director of Administrative Services is authorized and empowered to draw his or her warrants against the several fee fund accounts of each of the special boards, bureaus, commissions, or divisions enumerated in section ~~33-150~~ 33-151, upon duly itemized and verified vouchers approved by the person or persons having supervision or charge of ~~said the~~ the respective funds, and who are authorized by law to approve such vouchers. Upon presentation of ~~said the~~ the warrants the State Treasurer shall countersign the same and shall pay ~~said the~~ the warrants out of, but never in excess of, the amount of ~~said the~~ the fee funds specifically appropriated.

Sec. 4. Section 43-2606, Reissue Revised Statutes of Nebraska, is amended to read:

43-2606. (1) The Department of Health and Human Services Regulation and Licensure shall adopt and promulgate rules and regulations for mandatory training requirements for providers of child care and school-age-care programs. Such requirements shall include preservice orientation and at least four hours of annual inservice training. All child care programs required to be licensed under section 71-1911 shall show completion of a preservice orientation approved or delivered by the department prior to receiving a provisional license.

(2) The department shall initiate a system of documenting the training levels of staff in specific child care settings to assist parents in selecting optimal care settings.

(3) The training requirements shall be designed to meet the health, safety, and developmental needs of children and shall be tailored to the needs of licensed providers of child care programs.

(4) The department shall provide or arrange for training opportunities throughout the state and shall provide information regarding training opportunities to all providers of child care programs at the time of registration or licensure, when renewing a registration, or on a yearly basis following licensure.

(5) Each provider of child care and school-age-care programs

receiving orientation or training shall provide his or her social security number to the department.

(6) Rules and regulations adopted and promulgated under this section by the Department of Health and Human Services shall be deemed adopted and promulgated by the Department of Health and Human Services Regulation and Licensure on and after the effective date of this act.

Sec. 5. Section 44-2847, Reissue Revised Statutes of Nebraska, is amended to read:

44-2847. (1) Medical review panels shall be concerned only with the determination of the questions set forth in section 44-2843. Such panels shall not consider or report on disputed questions of law.

(2) To provide for uniformity of procedure, the Director of Regulation and Licensure shall appoint a doctor of medicine from the members of the Board of ~~Examiners~~ in Medicine and Surgery who shall sit with each panel as an observer and as an adviser on procedure but without a vote.

Sec. 6. Section 59-1617, Reissue Revised Statutes of Nebraska, is amended to read:

59-1617. (1) Except as provided in subsection (2) of this section, the Consumer Protection Act shall not apply to actions or transactions otherwise permitted, prohibited, or regulated under laws administered by the Director of Insurance, the Public Service Commission, the Federal Energy Regulatory Commission, or any other regulatory body or officer acting under statutory authority of this state or the United States. The Consumer Protection Act and federal antitrust laws shall not extend to or apply to (a) any actions or transactions on the part of any municipality or group of municipalities while engaged in regulating natural gas rates pursuant to the Municipal Natural Gas Regulation Act or section 16-679 or 17-528.02 or as otherwise permitted by law or (b) any actions or transactions on the part of any public power and irrigation district, public power district, electric membership association, or joint authority created pursuant to the Joint Public Power Authority Act or of any agency created pursuant to the Municipal Cooperative Financing Act, cooperative, or municipality engaged in furnishing electrical service to customers at retail or wholesale if such actions or transactions are otherwise permitted by law.

(2) Actions and transactions prohibited or regulated under the laws administered by the Director of Insurance shall be subject to section 59-1602 and all statutes which provide for the implementation and enforcement of section 59-1602. Actions and transactions prohibited or regulated under the laws administered by the Board of ~~Examiners~~ in Funeral Directing and Embalming or administered by the Department of Agriculture and actions and transactions relating to loan brokers which are prohibited or regulated pursuant to sections 45-189 to 45-191.11 and administered by the Department of Banking and Finance shall be subject to the Consumer Protection Act.

No penalty or remedy shall result from a violation of the Consumer Protection Act except as expressly provided in such act.

Sec. 7. Section 71-101, Revised Statutes Supplement, 1998, is amended to read:

71-101. Sections 71-101 to 71-1,107.30, 71-1,133 to 71-1,338, 71-1301 to 71-1354, and 71-2801 to 71-2822 and section 8 of this 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 of examiners or board shall mean one of the boards appointed by the State Board of Health;

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

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

(4) Department shall mean means the Department of Health and Human Services Regulation and Licensure;

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

(6) License, licensing, or licensure shall mean 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, shall mean 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 ~~shall also mean~~ means a document issued by the department which designates particular credentials for an individual; ~~and~~

(8) Lapse ~~shall mean~~ 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; ~~and~~

(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.

Sec. 8. (1) It is the intent of the Legislature that quality health care services and human services be provided to all citizens of the state and basic standards be developed to protect the public health and safety and that professions be regulated by the state only when it is demonstrated that such regulation is in the best interests of the public.

(2) The department shall periodically review each credentialed profession to determine if continued credentialing is needed to protect the public.

Sec. 9. Section 71-105, Reissue Revised Statutes of Nebraska, is amended to read:

71-105. ~~Every license, certificate, or registration credential to practice a profession shall be in the form of a document under the name and seal of the department Department of Health and Human Services Regulation and Licensure and signed by the Director of Regulation and Licensure and the Governor. It shall also be countersigned by the members of the appropriate professional board, of examiners which gives the examination for the particular profession, except that all licenses, certificates, and registrations credentials granted without examination may be issued by the department under its name and seal and signed by its director and the Governor. A copy of all licenses, certificates, and registrations credentials shall be retained in the department and given the same number as has been assigned to the licensee, certificate holder, or registrant credentialed person in the other records of the department.~~

Sec. 10. Section 71-107, Reissue Revised Statutes of Nebraska, is amended to read:

71-107. ~~Every person licensed, certified, or registered credentialed under the Uniform Licensing Law to practice a profession shall keep the credential available in an such license, certificate, or registration displayed in the office or place in which he or she practices and place and keep placed, in a conspicuous place at each entrance thereto, a sign, in intelligible lettering not less than one inch in height, containing the name of such person immediately followed by the recognized abbreviation indicating the professional degree, if any, held by such person.~~

In addition to the foregoing, those persons licensed or certified 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, or physical therapy shall ~~cause to be placed upon such signs, in lettering of equal height,~~ 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, or Physical Therapist, as the case may be. The same wording shall be used in all signs, announcements, stationery, and advertisements of such licensees and certificate holders.

Sec. 11. Section 71-108, Revised Statutes Supplement, 1998, is amended to read:

71-108. The name, date and place of birth, location or post office address, school and date of graduation, date of examination and ratings or grades received, and date of a ~~license, certificate, or registration credential~~ if one is issued of all applicants for examination in the several professions regulated by the Uniform Licensing Law shall be entered in a ~~record book~~ kept in the office of the department to be known as the registry record. A separate registry record shall be kept for each profession, the

names of applicants in that profession shall be given consecutive numbers, and all other records relating to that application or the ~~license, certificate, or registration~~ credential granted pursuant to that application shall be given the same number. A list shall also be kept of those granted ~~licenses, certificates, or registrations~~ credentials in the several professions. Applications for a ~~license, certificate, or registration~~ credential shall be upon forms prepared by the department, and the completed applications shall be kept as a part of the permanent files of the department. If the applicant is an individual, the application shall include the applicant's social security number. All applications based on ~~licenses, certificates, or registrations~~ credentials granted in other states shall be received upon forms prepared by the department and entered in the registry records as nearly as may be in the same form as are those applying for examinations. In addition, the date of ~~license, certificate, or registration~~ credentialing and the length of time of practice in the other state shall be given and entered. An applicant for credentialing in this state shall not be required to resubmit information previously submitted in connection with an application for credentialing made in this state or another jurisdiction unless requested by the department. The data in any or all of such records may be maintained in computer files, placed upon microfilm, or stored in a similar form. All such records, in whatever form, shall be available for public inspection, as defined by rules and regulations of the department. Investigational records, reports, and files pertaining to an application shall not be a public record until action is taken to grant or deny the application and may be withheld from disclosure thereafter under section 84-712.05. Social security numbers obtained under this section shall not be public information but may be shared by the department for administrative purposes if necessary and only under appropriate circumstances to ensure against any unauthorized access to such information.

Sec. 12. Section 71-110, Revised Statutes Supplement, 1998, is amended to read:

71-110. (1) The ~~different licenses, certificates, or registrations~~ credential to practice a profession shall be renewed biennially, except as provided in sections 71-1,228 and 71-1,294, upon request of the ~~licensee, certificate holder, or registrant~~ credentialed person, without examination. The biennial ~~license, certificate, or registration~~ credential renewals provided for in this section shall be accomplished in such manner as the department, with the approval of the appropriate 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;
- (f) June, respiratory care;
- (g) August, chiropractic and optometry;
- (h) September, medical nutrition therapy, mental health practice including any associated certification, and osteopathic medicine;
- (i) October, medicine and surgery;
- (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 legal fee. Such fee shall be paid not later than the date of the expiration of such ~~license, certificate, or registration~~ 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 amended, persons ~~licensed, certified, or registered~~ credentialed to practice the professions listed in this subsection shall not be required to pay the renewal fee.

(2) When an ~~individual licensed, certified, or registered~~ person credentialed pursuant to the Uniform Licensing Law desires to have his or her ~~license, certificate, or registration~~ credential lapse upon expiration, he or she shall notify the department of such desire in writing. The department shall notify the ~~licensee, certificate holder, or registrant~~ credentialed person in writing of the acceptance or denial of the request to allow the ~~license, certificate, or registration~~ credential to lapse. When the lapsed status becomes effective, the right to represent himself or herself as a ~~licensee, certificate holder, or registrant~~ credentialed person and to practice the profession in which ~~such a~~ license is required shall terminate. To restore the ~~license, certificate, or registration~~ credential, such ~~individual person~~ shall be required to meet the requirements for ~~licensure, certification, or registration~~ credentialing which are in effect at the time

that he or she wishes to restore the ~~license, certificate, or registration credential~~.

(3) When ~~an individual licensed, certified, or registered a person~~ credentialed pursuant to the Uniform Licensing Law desires to have his or her ~~license, certificate, or registration credential~~ placed on inactive status upon its expiration, he or she shall notify the department of such desire in writing and pay a fee of thirty-five dollars. The department shall notify the ~~licensee, certificate holder, or registrant~~ credentialed person in writing of the acceptance or denial of the request to allow the ~~license, certificate, or registration credential~~ to be placed on inactive status. When the ~~license, certificate, or registration credential~~ is placed on inactive status, the ~~licensee, certificate holder, or registrant~~ credentialed person shall not engage in the practice of such profession. A ~~license, certificate, or registration credential~~ may remain on inactive status for an indefinite period of time. In order to move a ~~license, certificate, or registration credential~~ from inactive to active status, ~~an individual~~ a person shall complete the continuing education requirements in effect at the time he or she wishes to regain active status and pay the renewal fee then due.

(4) At least thirty days before the expiration of a ~~license, certificate, or registration credential~~, the department shall notify each ~~licensee, certificate holder, or registrant~~ credentialed person by a letter addressed to him or her at his or her last place of residence as noted upon its records. Any ~~licensee, certificate holder, or registrant~~ credentialed person who fails to notify the department of his or her desire to let his or her ~~license, certificate, or registration credential~~ lapse or be placed on inactive status upon its expiration or who fails to pay the renewal fee on or before the date of expiration of his or her ~~license, certificate, or registration credential~~ shall be given a second notice in the same manner as the first notice advising him or her (a) of the failure to pay, (b) that the ~~license, certificate, or registration credential~~ 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 twenty-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 twenty-five dollars in addition to the regular renewal fee, the ~~license, certificate, or registration credential~~ will be revoked in the manner prescribed in section 71-149.

(5) Any ~~licensee, certificate holder, or registrant~~ credentialed person who fails to renew his or her ~~license, certificate, or registration credential~~ may be reinstated upon the recommendation of the board ~~of examiners~~ for his or her profession and the payment of the renewal and any additional fees and an additional fee of fifty dollars if an application for reinstatement is made more than thirty days after expiration and not more than one year from the date of revocation.

(6) Any ~~licensee, certificate holder, or registrant~~ credentialed person who applies for reinstatement more than one year after revocation shall pay the renewal fee and an additional fee of seventy-five dollars and petition the board ~~of examiners~~ to recommend reinstatement as prescribed in section 71-161.05.

Sec. 13. Section 71-111, Reissue Revised Statutes of Nebraska, is amended to read:

71-111. For the purpose of giving examinations to applicants for license to practice the professions for which a license is required by the Uniform Licensing Law or for the purpose of certification or registration, the State Board of Health shall appoint a professional board of examiners for each of the professions under the Uniform Licensing Law except osteopathic medicine and surgery.

Sec. 14. Section 71-112, Reissue Revised Statutes of Nebraska, is amended to read:

71-112. The professional boards of examiners provided in section 71-111 shall be designated as follows:

- (1) For medicine and surgery and osteopathic medicine and surgery, ~~Examiners in Board of~~ Board of Medicine and Surgery;
- (2) For ~~for~~ athletic training, ~~Examiners in Board of~~ Board of Athletic Training;
- (3) For ~~for~~ respiratory care, ~~Examiners in Board of~~ Board of Respiratory Care Practice;
- (4) For ~~for~~ chiropractic, ~~Examiners in Board of~~ Board of Chiropractic;
- (5) For ~~for~~ dentistry and dental hygiene, ~~Examiners in Board of~~ Board of Dentistry;
- (6) For ~~for~~ optometry, ~~Examiners in Board of~~ Board of Optometry;
- (7) For ~~for~~ massage therapy, ~~Examiners in Board of~~ Board of Massage Therapy;

(8) For ~~for~~ physical therapy, ~~Examiners in Board of~~ Physical Therapy;

(9) For ~~for~~ pharmacy, ~~Examiners in Board of~~ Pharmacy;

(10) For ~~for~~ audiology and speech-language pathology, ~~Examiners in Board of~~ Audiology and Speech-Language Pathology;

(11) For ~~for~~ medical nutrition therapy, ~~Examiners in Board of~~ Medical Nutrition Therapy;

(12) For ~~for~~ funeral directing and embalming, ~~Examiners in Board of~~ Funeral Directing and Embalming;

(13) For ~~for~~ podiatry, ~~Examiners in Board of~~ Podiatry;

(14) For ~~for~~ psychology, ~~Examiners Board of~~ Psychologists;

(15) For ~~for~~ veterinary medicine and surgery, ~~Examiners in Board of~~ Veterinary Medicine; and

(16) For ~~for~~ mental health practice, ~~Examiners in Board of~~ Mental Health Practice.

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. 15. Section 71-112.01, Reissue Revised Statutes of Nebraska, is amended to read:

71-112.01. The Board of ~~Examiners in~~ Medicine and Surgery shall be responsible for regulating the practice of osteopathic medicine and surgery in the same manner as such board regulates the practice of medicine and surgery.

Sec. 16. Section 71-112.03, Reissue Revised Statutes of Nebraska, is amended to read:

71-112.03. The purpose of each professional board of examiners is to: (1) Provide for the health, safety, and welfare of the citizens; (2) insure that licensees or certificate holders serving the public meet minimum standards of proficiency and competency; and (3) control ~~their~~ the profession in the interest of consumer protection.

Sec. 17. Section 71-113, Reissue Revised Statutes of Nebraska, is amended to read:

71-113. (1) Each professional board of examiners shall consist of four members, including one ~~layperson~~ public member, except ~~that~~ as otherwise provided in this section. A public member of a professional board appointed after the effective date of this act (a) shall be a resident of this state who has attained the age of majority, (b) shall represent the interests and viewpoints of consumers, and (c) shall not be a present or former member of a credentialed profession, an employee of a member of a credentialed profession, or an immediate family or household member of any person presently regulated by such board.

(2)(a) ~~in~~ In audiology and speech-language pathology the board shall consist of five members, including at least one layperson public member, (b) in dentistry the board shall consist of ten members, including at least two laypersons public members, (c) in medicine and surgery the board shall consist of eight members, including at least two laypersons public members, (d) in pharmacy the board shall consist of five members, including at least one layperson public member, (e) in psychology the board shall consist of ~~six~~ seven members, including ~~one layperson~~ at least two public members, (f) in medical nutrition therapy the board shall consist of five members, including ~~two laypersons~~, and at least one public member, (g) in mental health practice the board shall consist of not more than ten members, including ~~two laypersons~~ at least two public members, and (h) boards with eleven or more members shall have at least three public members.

~~(2)~~ (3) 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 at least one layperson public member.

~~(3)~~ (4) Membership on the Board of ~~Examiners in~~ Athletic Training shall consist of three athletic trainers and at least one layperson public member.

~~(4)~~ (5) Membership on the Board of ~~Examiners in~~ Respiratory Care Practice shall consist of two respiratory care practitioners, one physician, and at least one layperson public member.

~~(5)~~ (6) Two of the six professional members of the Board of ~~Examiners in~~ Medicine and Surgery shall be officials or members of the instructional staff of an accredited medical school in this state.

~~(6)~~ (7) Two of the eight professional members of the Board of ~~Examiners in~~ Dentistry shall be dentists who are officials or members of the instructional staff of an accredited school or college of dentistry in this

state, and two of the members of the board shall be dental hygienists licensed under the Uniform Licensing Law.

~~(7)~~ (8) Membership on the Board of ~~Examiners in~~ Medical Nutrition Therapy shall consist of two medical nutrition therapists, one physician, and ~~two laypersons at least one public member.~~

~~(8)~~ (9) Membership on the Board of ~~Examiners in~~ Mental Health Practice shall consist of not more than two certified master social workers, not more than two certified professional counselors, not more than two certified marriage and family therapists, and at least two laypersons public members. At least one professional member of the board shall be a member of a racial or ethnic minority. When ten or more persons hold licenses as mental health practitioners without holding an associated certificate, not more than two such licensed mental health practitioners shall be added to the board.

Sec. 18. Section 71-114, Reissue Revised Statutes of Nebraska, is amended to read:

71-114. (1) Except as provided in subsections ~~(4)~~, ~~(6)~~, and ~~(7)~~ (3) and (5) of this section, every professional member of a professional board of examiners shall be and have been actively engaged in the practice of his or her profession in the State of Nebraska, under a license, certificate, or registration credential issued in this state, for a period of five years just preceding his or her appointment, except for the members of professional boards of examiners for professions coming within the scope of the Uniform Licensing Law for the first time and for a period of five years thereafter. Members appointed during such period shall be required to meet the minimum qualifications for licensure, certification, or registration credentialing in the profession in this state and shall, insofar as possible, meet the requirements as to years of practice in this state otherwise provided by this section.

(2) A layperson member of a board of examiners shall be of the age of majority and shall have been a resident of the State of Nebraska for at least five years immediately prior to appointment to the board. Such a layperson member shall be a representative of consumer viewpoints.

~~(3)~~ Each professional member of the Board of Examiners in Audiology and Speech-Language Pathology shall have been a resident of the State of Nebraska for at least one year immediately prior to appointment and shall also have been engaged in rendering services to the public in audiology or speech-language pathology for at least three years immediately prior to appointment.

~~(4)~~ (3) The requirement of five years of experience shall apply to professional members of the Board of Examiners of Psychologists, except that up to two of the five years may have been served in teaching or research.

~~(5)~~ (4) All professional members of professional boards of examiners appointed to an initial board shall be licensed, certified, or registered credentialed within six months after being appointed to the board or within six months after the date by which members of the profession are required to be licensed, certified, or registered credentialed, whichever is later. If for any reason a professional member is not licensed, certified, or registered credentialed within such time period, a new professional member shall be appointed.

~~(6)~~ (5) Each professional member of a professional board of examiners first appointed to the Boards of ~~Examiners in~~ Athletic Training, Mental Health Practice, Respiratory Care Practice, and Medical Nutrition Therapy, respectively, shall be a person who is and has been actively engaged in the practice of athletic training, mental health practice, respiratory care, or medical nutrition therapy, respectively, for at least two years immediately preceding his or her appointment to the board and shall be credentialed licensed, certified, or registered, as appropriate, within six months after being appointed or within six months after members of the profession are required to be licensed, certified, or registered credentialed, whichever is later. If for any reason a professional member cannot be licensed, certified, or registered, as appropriate, credentialed within such time period, a new professional member shall be appointed.

~~(7)~~ The members initially appointed to the Board of ~~Examiners in~~ Mental Health Practice to fill the positions designated for certified master social workers shall be certified master social workers serving on the Board of ~~Examiners in~~ Social Work and to fill the positions designated for certified professional counselors shall be certified professional counselors serving on the Board of ~~Examiners in~~ Professional Counseling as such boards existed immediately prior to September 1, 1994.

Sec. 19. Section 71-115.01, Reissue Revised Statutes of Nebraska, is amended to read:

71-115.01. The department shall adopt and promulgate rules and

regulations which establish definitions of conflicts of interest for members of the professional boards of examiners specified in section 71-112 and which establish procedures in the case such a conflict arises.

Sec. 20. Section 71-116, Reissue Revised Statutes of Nebraska, is amended to read:

71-116. (1) The members of each professional board of examiners shall be residents of the State of Nebraska and shall be appointed for terms of five years. No member shall be appointed for or serve for more than two consecutive full five-year terms.

(2) The members of the Board of ~~Examiners in~~ Dentistry shall be appointed as follows: As of December 1, 1971, one member shall be appointed for a term of five years and one member shall be appointed for a term of three years; as of December 1, 1972, one member shall be appointed for a term of three years; as of December 1, 1973, one member shall be appointed for a term of three years; as of December 1 of each year thereafter, two members shall be appointed for terms of five years; as of December 1, 1979, one member who is a dental hygienist licensed under the Uniform Licensing Law and who complies with section 71-114 shall be appointed for a term of five years; as of December 1, 1984, one ~~layperson~~ public member shall be appointed for a term of five years; and as of December 1, 1994, a second member who is a dental hygienist licensed under the Uniform Licensing Law and who complies with section 71-114 and a second ~~layperson~~ public member shall be appointed for terms of five years. Thereafter successors with like qualifications shall be appointed for five-year terms.

(3) The members of the Board of ~~Examiners in~~ Medicine and Surgery shall be appointed as follows: Within thirty days after May 25, 1943, five members shall be appointed, one of whom shall hold office until December 1, 1944, one until December 1, 1945, one until December 1, 1946, one until December 1, 1947, and one until December 1, 1948; upon the expiration of such terms, successors shall be appointed for terms of five years each. Within thirty days after October 19, 1963, a sixth member, who shall be a person eligible for appointment to the Board of Examiners in Osteopathy who also has a license to practice medicine and surgery in the State of Nebraska, shall be appointed for a term expiring on December 1, 1968. As of December 1, 1984, one ~~layperson~~ public member shall be appointed for a term of five years, and as of December 1, 1994, a second ~~layperson~~ public member shall be appointed for a term of five years. Thereafter successors with like qualifications shall be appointed for five-year terms. Upon the expiration of the five-year term of such sixth member of the board after April 19, 1986, his or her eligible successor shall be a person who has a license to practice osteopathic medicine or osteopathic medicine and surgery in the State of Nebraska.

(4) The members of the Board of ~~Examiners in~~ Audiology and Speech-Language Pathology shall be appointed as follows: Within sixty days after July 22, 1978, four members shall be appointed, two of whom shall hold office until December 1, 1979, and two until December 1, 1980. As of December 1, 1984, one ~~layperson~~ public member shall be appointed for a term of five years. Upon the expiration of such terms, the successors shall be appointed for terms of five years each.

(5) The Board of ~~Examiners in~~ Pharmacy shall be composed of five members, including four actively practicing pharmacists, one of whom practices within the confines of a hospital, and a ~~layperson~~ public member who is interested in the health of the people of Nebraska. The members of the Board of ~~Examiners in~~ Pharmacy shall be appointed as follows: As of December 1, 1983, the hospital pharmacist member shall be appointed for a term of five years and the ~~layperson~~ public member shall be appointed for a term of three years. Upon the expiration of such terms and the terms of existing members, the successors shall be appointed for terms of five years each.

(6) The members of the Board of ~~Examiners of~~ Psychologists appointed as successors to the members serving on February 25, 1984, shall be appointed for terms of five years. The terms of members serving on February 25, 1984, are hereby extended to December 1 of the year in which they would otherwise expire.

(7) The three members serving on the Board of Examiners in Massage on August 1, 1988, shall be appointed as members of the Board of ~~Examiners in~~ Massage Therapy. Successors shall be massage therapists and shall be appointed for terms of five years each. One ~~layperson~~ public member shall be appointed on December 1, 1988, for a term of five years. Upon the expiration of the ~~layperson~~ public member's term, each subsequent ~~layperson~~ public member shall be appointed for a five-year term.

(8) The initial members of the Board of ~~Examiners in~~ Mental Health Practice appointed from the Board of Examiners in Social Work and the Board of Examiners in Professional Counseling, as such boards existed immediately prior

to September 1, 1994, shall serve until the expiration of the terms they would have served on their respective boards. One initial ~~layperson~~ public member and one initial marriage and family therapist shall hold office until December 1 of the fourth year following September 1, 1994, and one initial ~~layperson~~ public member and one initial marriage and family therapist shall hold office until December 1 of the fifth year following September 1, 1994.

(9) The term of each member provided for in this section shall commence on the first day of December following the expiration of the term of the member whom such person succeeds and shall be rotated in such a manner that no more than one ~~examiner~~ professional member shall retire during any year in which a term expires unless the number of members on a board makes it impractical to do so.

(10) Except as otherwise specifically provided, the members of boards for professions coming under the scope of the Uniform Licensing Law for the first time shall be appointed within thirty days after the effective or operative date, whichever is later, of the act providing for ~~licensing, certification, or registration~~ credentialing of the profession, the terms of the initial board members to be as follows: One member shall hold office until December 1 of the third year, one until December 1 of the fourth year, and two, including the ~~layperson~~ public member, until December 1 of the fifth year following the year in which the act providing for ~~licensing, certification, or registration~~ credentialing of the profession became effective.

Sec. 21. Section 71-117, Reissue Revised Statutes of Nebraska, is amended to read:

71-117. The regular state association or society, or its managing board, for each profession may submit each year to the State Board of Health a list of five persons of recognized ability in such profession who have the qualifications prescribed for ~~examiners~~ professional members of the professional board for that particular profession. Each professional member of the Board of ~~Examiners in~~ Pharmacy shall be the recipient of a diploma of graduation from an accredited school or college of pharmacy. If such a list is submitted, the State Board of Health, ~~in making an appointment of a professional person to the board of examiners for such profession,~~ shall consider the names on such list and may appoint one of the persons so named. Any person who desires to be considered for an appointment to a professional board of examiners and who possesses the necessary qualifications for such appointment may apply on a form provided by the State Board of Health any time prior to October 1 of each year. The State Board of Health shall consider such applications and may appoint any qualified person so applying to the professional board, of examiners, even though such person is not named on a list submitted by the association or society.

Sec. 22. Section 71-118, Reissue Revised Statutes of Nebraska, is amended to read:

71-118. The State Board of Health shall have power to remove from office at any time any member of a professional board, of examiners, after a public hearing pursuant to the provisions of the Administrative Procedure Act, for physical or mental incapacity to carry out the duties of a board member, for continued neglect of duty, for incompetency, for acting beyond the individual member's scope of authority, for malfeasance in office, for any cause for which a professional license, certificate, or registration credential in the profession involved may be suspended or revoked under section 71-147 or 71-148, or for a lack of ~~licensure, certification, or registration~~ a credential in the profession involved.

Sec. 23. Section 71-119, Reissue Revised Statutes of Nebraska, is amended to read:

71-119. Any vacancy in the membership of a professional board of examiners caused by death, resignation, removal, or otherwise, shall be filled for the period of the unexpired term in the same manner as original appointments are made.

Sec. 24. Section 71-120, Reissue Revised Statutes of Nebraska, is amended to read:

71-120. Each professional board of examiners shall organize annually at its first meeting subsequent to December 1, and shall select a ~~chairman, a vice-chairman~~ chairperson, a vice-chairperson, and a secretary from its own membership.

Sec. 25. Section 71-121, Revised Statutes Supplement, 1998, is amended to read:

71-121. The department shall, as far as practicable, provide for the conducting of the business of ~~several the professional boards of examiners~~ by mail and may hold meetings by teleconference subject to Chapter 84, article 14. Any official action or vote of the members of a professional board of examiners taken by mail shall be preserved in the records of the department

and shall be embodied in the proper minute book by the department.

Sec. 26. Section 71-121.01, Revised Statutes Supplement, 1998, is amended to read:

71-121.01. The department shall be responsible for the general administration of the activities of each of the boards of ~~examiners~~ as defined in Chapter 71, articles 1, 3, 47, and 61, and the boards of ~~examiners for the professions~~ covered by the scope of the Uniform Licensing Law and named in section 71-102. The cost of operation and administration of the boards of ~~examiners~~ shall be paid from fees received by the boards. ~~of examiners.~~ The Director of Regulation and Licensure shall determine the proportionate share of this cost to be paid from the fees of the respective boards, except that no fees shall be paid for such purpose from any fund without the prior approval of the boards of ~~examiners~~ concerned. The director's determinations shall become final when approved by the respective boards of ~~examiners~~ and the department and shall be valid for one fiscal year only.

Sec. 27. Section 71-122, Reissue Revised Statutes of Nebraska, is amended to read:

71-122. Each member of a professional board of ~~examiners~~ 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 the examination, and, with the exception of board members who are ~~laypersons~~ public members, for a reasonable number of days for the preparation of examination questions and the reading of the answer papers, in addition to the time actually spent in conducting the examination. Traveling and lodging expenses shall be on the same basis as provided in sections 81-1174 to 81-1177. ~~for state employees.~~ The compensation per day in the ~~several professions~~ shall not exceed thirty dollars and shall be determined by each board of ~~examiners~~ with the approval of the department, except that there shall not be paid for ~~examiners' members'~~ compensation and expenses a greater sum than is received in fees from the applicants taking the examination in any particular profession.

Sec. 28. Section 71-123, Reissue Revised Statutes of Nebraska, is amended to read:

71-123. Examinations for licensure in any of the professions may be held in any suitable area approved by the department upon recommendation of the appropriate professional board. ~~of examiners in that profession.~~

Sec. 29. Section 71-124, Reissue Revised Statutes of Nebraska, is amended to read:

71-124. Each professional board of ~~examiners~~ may select one or more of its members to attend the annual meeting of the national organization of state examining boards of such profession. Any member so selected shall receive his or her necessary traveling and lodging expenses in attending such meeting on the same basis as provided in sections 81-1174 to 81-1177 ~~for state employees~~ if there are funds available belonging to that board.

Sec. 30. Section 71-124.01, Reissue Revised Statutes of Nebraska, is amended to read:

71-124.01. Whenever the department deems it necessary to appoint an inspector or investigator to assist it in performing its duty, the department may appoint a person who is actively engaged in such profession or any other qualified person who has been trained in investigational procedures and techniques to serve as such inspector or investigator with the consent and approval of the appropriate professional board of ~~examiners of the profession involved~~ when applicable, except that only a licensed pharmacist who is or who has been engaged in the active practice of pharmacy as defined in subdivision (1) of section 71-1,142 shall be appointed by the department to serve as a pharmacy inspector with the consent and approval of the Board of ~~Examiners in Pharmacy.~~

Sec. 31. Section 71-128, Reissue Revised Statutes of Nebraska, is amended to read:

71-128. The department shall prepare and keep up to date a list of accredited colleges in which are taught the professions which are regulated by the Uniform Licensing Law. The appropriate professional board of ~~examiners~~ shall make recommendations relative thereto and shall approve the list for the profession for which it gives examinations. No school shall be accredited without the formal action of the department and the board. ~~of examiners for the profession which that school teaches.~~ Any professional school or college whose graduates or students desire to take the Nebraska state board examination shall supply the department with the necessary data to allow the board of ~~examiners~~ and the department to determine whether that school should be accredited. The department may adopt any national examination to constitute part of or all of the licensure or certification examination for

any of the professions which are regulated by the Uniform Licensing Law. Such examination shall be approved by the board ~~of examiners for the profession involved~~ as being a part of or all of the examination for licensure or certification.

Sec. 32. Section 71-129, Reissue Revised Statutes of Nebraska, is amended to read:

71-129. Examinations for licensure or certification shall be held on such dates and at such times and places as the department or the organization specified by the department may set. Such dates, times, and places as set by the department shall not exceed four in any one year except (1) as provided in section 71-133 for dentistry or (2) in those professions when nonpractical examinations are available for administration by either computers or in written form on a more frequent basis. Examinations may be held in any college or program or at any other location as determined by the department or the organization specified by the department. Any examination may be held concurrently in two or more places to accommodate the applicants therefor. Special examinations may be given at the expense of the applicant and administered by the department, the organization specified by the department, or the appropriate professional board. ~~of examiners in that particular profession.~~

Sec. 33. Section 71-131, Reissue Revised Statutes of Nebraska, is amended to read:

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

(a) The department may, upon the recommendation of the appropriate professional board, ~~of examiners~~, adopt and promulgate rules and regulations to specify the passing grade on licensure or certification examinations. In the absence of such rules and regulations, an examinee shall be required to obtain an average grade of seventy-five and shall be required to obtain a grade of sixty in each subject examined;

(b) A person who desires to take a licensure or certification examination but does not wish to receive a license or certification may take such examination by meeting the examination eligibility requirements and paying the cost of the examination and an administrative fee of twenty-five dollars; and

(c) An examinee who fails a licensure or certification examination may retake the entire examination or the part failed upon payment of the licensure or certification fee each time he or she is examined. The department shall withhold from the licensure or certification fee the cost of any national examination used and the administrative fee authorized in section 71-163 when an examinee fails a licensure or certification examination and shall return to the examinee the remainder of the licensure or certification fee collected, except that:

(i) If the state-developed jurisprudence portion of the licensure or certification examination was failed, the examinee may retake that portion without charge; and

(ii) If any component of a national examination was failed, the examinee shall be charged the cost for purchasing such examination.

(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 in an examination in jurisprudence of pharmacy.

(3) In social work, the passing criterion for such examination shall be established and may be changed by the Board of ~~Examiners in~~ Mental Health Practice by rule and regulation. The board may exempt an applicant from the written examination if he or she meets all the requirements for certification without examination pursuant to section 71-1,319 or rules and regulations adopted and promulgated by the department pursuant to section 71-139.

(4) In professional counseling, the passing criterion for such examination shall be established and may be changed by the Board of ~~Examiners in~~ Mental Health Practice by rule and regulation. The board may exempt an applicant from the written examination if he or she meets all of the requirements for certification without examination pursuant to rules and regulations adopted and promulgated by the department pursuant to section 71-139.

(5) In marriage and family therapy, the passing criterion for such examination shall be established and may be changed by the Board of ~~Examiners in~~ Mental Health Practice by rule and regulation. The board may exempt an applicant from the written examination if he or she meets all of the requirements for certification without examination pursuant to section 71-1,329 or rules and regulations adopted and promulgated by the department pursuant to section 71-139.

(6) Applicants for licensure in medicine and surgery and osteopathic medicine and surgery shall pass the licensing examination. An applicant who fails to pass any part of the licensing examination within four attempts shall complete one additional year of postgraduate medical education at an accredited school or college of medicine or osteopathic medicine. All parts of the licensing examination must be successfully completed within seven years. An applicant who fails to successfully complete the licensing examination within seven years shall retake that part of the examination which is more than seven years old.

(7) In medical nutrition therapy, the passing criterion for such examination shall be established and may be changed by the Board of ~~Examiners~~ ~~in~~ Medical Nutrition Therapy by rule and regulation. Such examination shall test for the essential clinical elements of the field of medical nutrition therapy. The board shall base its actions on broad categorical parameters derived from the essential elements of the field of medical nutrition therapy. It shall not endorse nor restrict its assessment to any particular nutritional school of thought in its selection of examinations, passing criterion for such examinations, evaluation of credentials, approval of continuing education hours, application of practice standards, or in any other actions. The board may exempt an applicant from the written examination if he or she meets all of the requirements for licensure without examination pursuant to section 71-1,291 or rules and regulations adopted and promulgated by the department pursuant to section 71-139.

Sec. 34. Section 71-132, Reissue Revised Statutes of Nebraska, is amended to read:

71-132. All examinations in theory shall be in writing, and the identity of persons taking the same shall not be disclosed upon the examination paper in such a way as to enable the professional board ~~of examiners~~ to know by whom written. In examinations in practice, the identity of the candidate shall also be concealed as far as possible, and the board members shall in every way endeavor to carry out the spirit of this section.

Sec. 35. Section 71-133, Reissue Revised Statutes of Nebraska, is amended to read:

71-133. (1) The oral or practical work portion of any examination for licensure or certification under the Uniform Licensing Law shall be given by a majority of the members of the appropriate professional board ~~for the respective profession~~ except in dentistry. The oral examination questions shall be limited to the practice of the profession. The members of the board need not be present at the examination given to applicants when a national examination or any other written examination is utilized. Such board may delegate the administration of such examination to the department. The department may designate an organization to administer a national or written examination.

(2) In dentistry, the final practical examination in clinical dentistry may be given at the infirmary of each of the dental colleges, schools, or departments legally conducted in the State of Nebraska of which the applicant is a graduate. The Central Regional Dental Testing Service practical examination may be used to meet the requirement of a final practical examination for dentists and for dental hygienists. Any person who applies for a license to practice dentistry or dental hygiene who has failed on one occasion to pass the oral practical examination administered by the Board of ~~Examiners~~ ~~in~~ Dentistry shall be required to subsequently take and pass the Central Regional Dental Testing Service practical examination before the department shall consider the applicant's qualifications for a license to practice dentistry or dental hygiene in the State of Nebraska. Any person who applies for a license to practice dentistry or dental hygiene who has failed on two occasions to pass any part of the examination shall be required to complete a course in clinical dentistry approved by the board before the department shall consider the results of a third examination as a valid qualification for a license to practice dentistry or dental hygiene in the State of Nebraska.

Sec. 36. Section 71-138, Reissue Revised Statutes of Nebraska, is amended to read:

71-138. (1) All question and answer sheets connected with any examination for licensure or certification shall be maintained by the department, national organization, or testing service for a period of two years from the date of administration of the examination. When national examinations that are governed by security considerations are utilized, they shall be available from the developing testing service for a period of two years, during which time such question and answer sheets shall be open to inspection by an applicant or his or her designee. Question and answer sheets for any national machine-graded or computer-scored examination which are

protected by security agreements, copyright provisions, or departmental or state contractual agreements for use shall not be required to be on file with the department but shall be available for a period of two years, upon demand, from any testing service utilized, at the discretion of the department or upon order of a court of competent jurisdiction.

(2) The department, upon the recommendation of the professional board, of examiners, may adopt and promulgate rules and regulations:

(a) To specify eligibility for taking the licensure or certification examination. In determining such eligibility, the department and the board shall consider the practices of other states and the promotion of reciprocal relations but shall determine such eligibility standards based on the extent to which completion of a course of study prior to examination is necessary to assure that applicants for licensure or certification meet minimum standards of proficiency and competency for the protection of the health and safety of the public;

(b) To specify licensure or certification examination application procedures, including the date, time, and place of examination and the deadline for making such application;

(c) To provide for the review of procedures for the development of examinations;

(d) To govern the administration of all or separate components of examinations for licensure or certification;

(e) To protect the security of the content of examination questions and answers; and

(f) To provide for the review of the examination question and answer sheets by examinees who fail the licensure or certification examinations or their designees.

The department shall not enter into an agreement to adopt an examination from a national testing service without first obtaining from that service detailed documentation of the process of examination development and maintenance.

Sec. 37. Section 71-139, Reissue Revised Statutes of Nebraska, is amended to read:

71-139. The department may, without examination, except when a practical examination is required, issue a license to practice any profession, except pharmacy, podiatry, dentistry, medicine and surgery, optometry, osteopathic medicine and surgery or as an osteopathic physician, and audiology and speech-language pathology, to a person who has been in the active practice of that profession in some other state or territory or the District of Columbia upon the certificate of the proper licensing authority of the state, territory, or District of Columbia certifying that the applicant is duly licensed, that his or her license has never been suspended or revoked, and that, so far as the records of such authority are concerned, the applicant is entitled to its endorsement.

The applicant shall also present proof of the following things:

(1) That the state, territory, or District of Columbia from which the applicant comes shall have and maintain standards regulating his or her profession equal to those maintained in that profession by Nebraska;

(2) That his or her license there was based upon a written examination and the grades given at such examination;

(3) The date of his or her license;

(4) That such licensee has been actively engaged in the practice under such license or in an accepted residency or graduate training program for at least one of the three years immediately preceding the application for license by reciprocity;

(5) ~~The affidavit of at least two practitioners in that state or territory or the District of Columbia testifying to~~ That the applicant being is of good moral character and standing in his or her profession as evidenced by completing under oath an application from the department containing such a statement; and

(6) That the applicant has been in the active and continuous practice under license by examination in the state, territory, or District of Columbia from which he or she comes for at least one year.

An applicant for reciprocal registration coming from any state may be licensed by reciprocity if his or her individual qualifications meet the Nebraska legal requirements.

The department may issue certificates or registrations on a reciprocal basis to persons who are required to be certified or registered pursuant to the Uniform Licensing Law. The department may adopt and promulgate rules and regulations for reciprocity pursuant to this section.

Persons who graduate from schools or colleges of osteopathic medicine accredited by the department on recommendation of the Board of

Examiners in Osteopathy since January 1, 1963, and prior to May 23, 1981, and after May 23, 1981, persons who graduate from schools or colleges of osteopathic medicine accredited by the department on recommendation of the Board of ~~Examiners in~~ Medicine and Surgery who meet the requirements of this section and who have passed a written examination which is equivalent to that required in section 71-1,104 as determined by the Board of ~~Examiners in~~ Medicine and Surgery and who meet the requirements of section 71-1,137 for the practice of osteopathic medicine and surgery as evidenced by a certificate of the Board of ~~Examiners in~~ Medicine and Surgery may be granted a license to practice osteopathic medicine and surgery as defined in section 71-1,137 if such person has been actively engaged in the practice under such license or in an accepted residency or graduate training program for at least one of the three years immediately preceding the application for license by reciprocity. Graduates of an accredited school or college of osteopathic medicine since January 1, 1963, who meet the requirements of this section and who meet the applicable requirements of section 71-1,139.01 as certified by the Board of ~~Examiners in~~ Medicine and Surgery may be granted a special license as doctor of osteopathic medicine and surgery.

The department may approve without examination any person who has been duly licensed to practice optometry in some other state or territory of the United States of America or in the District of Columbia under conditions and circumstances which the Board of ~~Examiners in~~ Optometry shall find to be comparable to the requirements of the State of Nebraska for obtaining a license to practice optometry if such person has been actively engaged in the practice under such license for at least one of the three years immediately preceding the application for license by reciprocity. The applicant shall produce evidence satisfactory to the board that he or she has had the required secondary and professional education and training. The applicant shall submit a certificate of the proper licensing authority of the state, territory, or District of Columbia where he or she is licensed to practice such profession certifying that he or she is duly licensed, that his or her license has not been suspended or revoked, and that so far as the records of such authority are concerned he or she is entitled to its endorsement. If the applicant is found to meet the requirements provided in this section and is qualified to be licensed to practice the profession of optometry in the State of Nebraska, the board shall issue a license to practice optometry in the State of Nebraska to such applicant.

The Board of ~~Examiners in~~ Dentistry may approve any person who has been duly licensed to practice dentistry or dental hygiene in some other state or territory of the United States of America or in the District of Columbia under conditions and circumstances which the board shall find to be comparable to the requirements of the State of Nebraska for obtaining a license to practice dentistry or dental hygiene if such person has been actively engaged in the practice under such license or in an accepted residency or graduate training program for at least three years, one of which must be within the three years immediately preceding the application for license by reciprocity. The applicant shall produce evidence satisfactory to the board that he or she has had the required secondary and professional education and training and is possessed of good character and morals as required by the laws of the State of Nebraska. The applicant shall submit a certificate of the proper licensing authority of the state, territory, or District of Columbia where he or she is licensed to practice such profession certifying that he or she is duly licensed, that his or her license has not been suspended or revoked, and that so far as the records of such authority are concerned he or she is entitled to its endorsement. The applicant shall submit evidence of completion during the twelve-month period preceding the application of continuing education requirements comparable to the requirements of this state. The board ~~of~~ ~~examiners~~ may administer an oral examination to all applicants for licensure by reciprocity to assess their knowledge of basic clinical aspects of dentistry or dental hygiene. If the applicant is found by the board to meet the requirements provided in this section, the board shall certify such fact to the department, and the department upon receipt of such certification shall issue a license to practice dentistry or dental hygiene in the State of Nebraska to such applicant. If the board finds that the applicant does not satisfy the requirements of this section, the board shall certify its findings to the department. The Director of Regulation and Licensure shall review the findings and shall, if in agreement with the findings, deny the application.

Sec. 38. Section 71-139.01, Reissue Revised Statutes of Nebraska, is amended to read:

71-139.01. The Board of ~~Examiners in~~ Medicine and Surgery may approve without examination: (1) Any person who after examination has been duly licensed to practice medicine and surgery in some other state or

territory of the United States of America or in the District of Columbia under conditions and circumstances which the board shall find to be comparable to the requirements of the State of Nebraska for obtaining a license to practice medicine and surgery; (2) any person who is a graduate of an accredited college or school of medicine and surgery located in the Canadian provinces and who has satisfactorily completed the Licentiate of the Medical Council of Canada examination and has been duly licensed to practice medicine and surgery in Canada under conditions and circumstances which the board shall find to be comparable to the requirements of the State of Nebraska for obtaining a license to practice medicine and surgery; or (3) any person who is a foreign medical graduate and who has not graduated from an accredited school or college of medicine of the United States or Canada but who has satisfactorily completed the Licentiate of the Medical Council of Canada examination and who possesses a certificate issued by the Educational Commission on Foreign Medical Graduates, or its equivalent as provided for in section 71-1,104, and has been duly licensed to practice in Canada under conditions and circumstances which the board shall find to be comparable to the requirements of the State of Nebraska for obtaining a license to practice medicine and surgery. The applicant shall produce evidence satisfactory to the board that he or she has had the required secondary and professional education and training and is possessed of good character and morals as required by the laws of the State of Nebraska. The applicant shall also produce evidence satisfactory to the board that he or she has been in the active practice of the profession of medicine and surgery in some other state, territory, the District of Columbia, or Canada for a period of one year, or has had one year or more of residency or graduate training in an accredited hospital within the three years immediately preceding the application for licensure, and shall submit a certificate of the proper licensing authority of the state, territory, the District of Columbia, or Canada where he or she is licensed to practice such profession, that the applicant is duly licensed, that his or her license has not been suspended or revoked, and that so far as the records of such authority are concerned, the applicant is entitled to its endorsement. If the applicant is found by the board to meet the requirements provided in this section and to be qualified to be licensed to practice the profession of medicine and surgery in the State of Nebraska, the board shall certify such fact to the department and the department upon receipt of such certification shall issue a license to practice medicine and surgery in the State of Nebraska to such applicant.

Sec. 39. Section 71-140, Reissue Revised Statutes of Nebraska, is amended to read:

71-140. The Board of ~~Examiners in Pharmacy~~ may recommend to the ~~department~~ Department of Health and Human Services Regulation and Licensure the registration as a pharmacist, without examination, of any person who is duly so registered by examination in some other state in which, under like conditions, reciprocal registration as a pharmacist, without examination, is granted to pharmacists duly registered by examination in this state. The applicant shall produce evidence satisfactory to the board of having had the required secondary and professional education and training, of having been actively engaged in the practice under such registration or in an accepted residency or graduate training program for at least one of the three years immediately preceding the application for reciprocal registration, and of being possessed of good character and morals, as demanded of applicants for registration under sections 71-1,142 to 71-1,147. Persons of good character who have become registered as pharmacists by examination in other states prior to September 1, 1939, shall be required to meet only the requirements which existed in this state at the time when they became registered in such other state.

Sec. 40. Section 71-141, Revised Statutes Supplement, 1998, is amended to read:

71-141. In order that the ~~Department of Health and Human Services Regulation and Licensure~~ department may determine the standards established by law and by rule in the other states, the Director of Regulation and Licensure, or some other person authorized by the director, shall gather information from other states bearing upon this point. The applicant shall, upon the request of the department, be responsible for securing information from the proper authority of the place from which he or she comes, of the standards maintained there, and the laws and rules relating thereto. In determining these standards, the department shall submit to the ~~interested~~ interested appropriate professional board of examiners any question that requires the exercise of expert knowledge.

Sec. 41. Section 71-143, Reissue Revised Statutes of Nebraska, is amended to read:

71-143. In those professions requiring a practical examination in connection with the admission of applicants from other states without general examination, if the appropriate professional board of examiners in the interested profession is not expected to be in session within thirty days, the Department of Health and Human Services Regulation and Licensure department may ask at least one-third of that board to give a special examination, and may fix ~~their~~ reasonable compensation therefor, in addition to ~~their~~ traveling expenses.

Sec. 42. Section 71-144, Reissue Revised Statutes of Nebraska, is amended to read:

71-144. The Department of Health and Human Services Regulation and Licensure department, with the consent of the interested appropriate professional board, of examiners, shall have power to establish the necessary rules, not inconsistent with the law, to carry out the reciprocal relations with other states which are authorized herein in the Uniform Licensing Law.

Sec. 43. Section 71-155, Revised Statutes Supplement, 1998, is amended to read:

71-155. (1) The proceeding under section 71-150 shall be summary in its nature and triable as an equity action and shall be heard by the Director of Regulation and Licensure or by a hearing officer designated by the director under rules and regulations of the department. Affidavits may be received in evidence in the discretion of the director or hearing officer. The department shall have the power to administer oaths, to subpoena witnesses and compel their attendance, and to issue subpoenas duces tecum and require the production of books, accounts, and documents in the same manner and to the same extent as the district courts of the state. Depositions may be used by either party. Upon the completion of any hearing held under this section, the director shall, if the petition is brought with respect to subdivision (15) of section 71-148, make findings as to whether the licensee's conduct was necessary to save the life of a mother whose life was endangered by a physical disorder, physical illness, or physical injury, including a life-endangering physical condition caused by or arising from the pregnancy itself, and shall have the authority through entry of an order to exercise in his or her discretion any or all of the following powers, irrespective of the petition:

(1) (a) Issue a censure ~~or reprimand~~ against the licensee, certificate holder, or registrant credentialed person;

(2) ~~Suspend judgment~~;

(3) (b) Place the licensee, certificate holder, or registrant credentialed person on probation;

(4) (c) Place a limitation or limitations on the license, certificate, or registration credential and upon the right of the licensee, certificate holder, or registrant credentialed person to practice the profession to such extent, scope, or type of practice, for such time, and under such conditions as are found necessary and proper;

(5) (d) Impose a civil penalty not to exceed ~~ten~~ twenty thousand dollars. The amount of the penalty shall be based on the severity of the violation;

(6) (e) Enter an order of suspension of the license, certificate, or registration credential;

(7) (f) Enter an order of revocation of the license, certificate, or registration credential; and

(8) (g) Dismiss the action.

(2) If the director determines that guilt has been established, the director may, at his or her discretion, consult with the professional board of examiners for the profession involved concerning sanctions to be imposed or terms and conditions of the sanctions. When the director consults with a professional board, of examiners, the licensee or certificate holder credentialed person shall be provided with a copy of the director's request, the recommendation of the board, of examiners, and an opportunity to respond in such manner as the director determines.

(3) The licensee, certificate holder, or registrant credentialed person shall not engage in the practice of a profession after a license, certificate, or registration credential to practice such profession is revoked or during the time for which it is suspended. If a license, certificate, or registration credential is suspended, the suspension shall be for a definite period of time to be set by the director. The director may provide that the license, certificate, or registration credential shall be automatically reinstated upon expiration of such period, reinstated if the terms and conditions as set by the director are satisfied, or reinstated subject to probation or limitations or conditions upon the practice of the licensee, certificate holder, or registrant credentialed person. If such license, certificate, or registration credential is revoked, such revocation shall be

for all times, except that at any time after the expiration of two years, application may be made for reinstatement pursuant to section 71-161.04.

Sec. 44. Section 71-161.03, Reissue Revised Statutes of Nebraska, is amended to read:

71-161.03. (1) Any petition filed with the Director of Regulation and Licensure pursuant to section 71-150 may, at any time prior to the entry of any order by the director, be disposed of by stipulation, agreed settlement, consent order, or similar method as agreed to between the parties. A proposed settlement shall be submitted and considered in camera and shall not be a public record unless accepted by the director. The director may review the input provided to the Attorney General by the board pursuant to subsection (2) of this section. If the settlement is acceptable to the director, he or she shall make it the sole basis of any order he or she enters in the matter, and it may be modified or added to by the director only upon the mutual consent of both of the parties thereto. If the settlement is not acceptable to the director, it shall not be admissible in any subsequent hearing and it shall not be considered in any manner as an admission.

(2) The Attorney General shall not enter into any agreed settlement or dismiss any petition without first having given notice of the proposed action and an opportunity to the appropriate professional board of examiners to provide input into the terms of the settlement or on dismissal. The board shall have fifteen days from the date of the Attorney General's request to respond, but the recommendation of the board, if any, shall not be binding on the Attorney General. Meetings of the board for such purpose shall be in closed session, and any recommendation by the board to the Attorney General shall not be a public record until the pending action is complete, except that if the director reviews the input provided to the Attorney General by the board ~~of examiners~~ as provided in subsection (1) of this section, the licensee or certificate holder shall also be provided a copy of the input and opportunity to respond in such manner as the director determines.

Sec. 45. Section 71-161.04, Reissue Revised Statutes of Nebraska, is amended to read:

71-161.04. (1) A person ~~licensed, certified, or registered~~ credentialed by the department whose ~~license, certificate, or registration~~ credential has been suspended or has had limitations placed thereon for any reason specified in sections 71-147 and 71-148 may petition the appropriate professional board of examiners in the profession of the petitioner to recommend the reinstatement of the ~~license, certificate, or registration~~ credential at any time.

(2) A person ~~licensed, certified, or registered~~ credentialed by the department whose ~~license, certificate, or registration~~ credential has been revoked for any reason specified in such sections may petition the board ~~of examiners~~ to recommend reinstatement after a period of two years has elapsed from the date of revocation.

Sec. 46. Section 71-161.07, Reissue Revised Statutes of Nebraska, is amended to read:

71-161.07. (1) Each professional board of examiners shall make a recommendation to the Director of Regulation and Licensure regarding reinstatement following disciplinary action within the board's profession. In determining whether reinstatement should be recommended, the board ~~(1)~~ (a) may request the department to investigate the petitioner to determine if the petitioner has committed acts or offenses prohibited by sections 71-147 and 71-148, ~~(2)~~ (b) may require the petitioner to submit to a complete diagnostic examination by one or more physicians appointed by the board, the petitioner being free also to consult a physician or physicians of his or her own choice for a complete diagnostic examination and to make available a report or reports thereof to the board, ~~and (3)~~ (c) may require the petitioner to pass a written, oral, or practical examination or any combination of such examinations, ~~and (d) may require additional education.~~

(2) The affirmative vote of a majority of the members of the board shall be necessary to recommend reinstatement of a ~~license, certificate, or registration~~ credential with or without terms, conditions, or restrictions. The board may grant or deny, without a hearing or argument, any petition to recommend reinstatement filed pursuant to section 71-161.04 when the petitioner has been afforded a hearing or an opportunity for a hearing upon any such petition within a period of two years immediately preceding the filing of such petition.

(3) Denial by the board of the petition for recommendation of reinstatement of the license or certificate may be appealed. The appeal shall be in accordance with the Administrative Procedure Act.

Sec. 47. Section 71-161.09, Reissue Revised Statutes of Nebraska, is amended to read:

71-161.09. ~~The board of examiners for any profession or occupation licensed, certified, or registered by the department pursuant to Chapter 71~~ Each professional board, with the approval of the department, may adopt and promulgate, by rules and regulations, standards of ~~relicensure, recertification, and reregistration~~ recredentialing for each ~~Nebraska-licensed, Nebraska-certified, and Nebraska-registered practitioner of such profession or occupation~~ person credentialed by and in active practice within the State of Nebraska. Such regulations may include the prescribed number of hours which are to be attained biennially for receiving information presented by or in the form of board-approved scientific schools, clinics, forums, lectures, courses of study, home study courses, or educational seminars relating to the practice of such profession or occupation and held within or outside the state. The board and the department shall consult with the appropriate professional academies, professional societies, and professional associations in the development of such standards. The purpose of any such action by such board shall be to the end that the utilization and application of new techniques, scientific and clinical advances, and the achievements of research will assure expansive and comprehensive service to the public. The number of hours that may be required shall be prescribed by the board in such rules and regulations for any calendar year. In no instance may the board require a greater number of hours of approved scientific schools, clinics, forums, lectures, courses of study, or educational seminars than are available at approved scientific schools, clinics, forums, lectures, courses of study, or educational seminars held within the State of Nebraska.

Sec. 48. Section 71-161.10, Revised Statutes Supplement, 1998, is amended to read:

71-161.10. (1) Upon the establishment of such standards for ~~relicensure, recertification, or reregistration~~ recredentialing by any professional board, of examiners, by rule and regulation, and with the approval of the department, each ~~licensed, certified, or registered practitioner of such profession or occupation~~ credentialed person in active practice within the state shall, on or before the date of expiration of his or her ~~license, certificate, or registration~~ credential in the year the requirement applies, certify on an affidavit form provided by the ~~appropriate professional board of examiners of the profession or occupation concerned~~ that he or she has complied with section 71-161.09 during the preceding two-year period. ~~Such~~ The board shall, on or before the date of expiration of the ~~license, certificate, or registration~~ credential in the year the requirement applies, report all ~~licensees, certificate holders, or registrants~~ each credentialed person who ~~have~~ has complied with the educational requirements to the ~~Department of Health and Human Services Regulation and Licensure~~ department. ~~Licensees, certificate holders, or registrants~~ A credentialed person who ~~have~~ has not complied with such requirement shall not be issued a ~~renewal license, certificate, or registration~~ credential unless such requirements are waived or unless such ~~licensees, certificate holders, or registrants~~ are credentialed person is unable to comply due to circumstances beyond ~~their~~ his or her control. Procedures for nonrenewal of the ~~license, certificate, or registration~~ of such licensees, certificate holders, or registrants credential due to failure to submit proof of continuing education shall be identical to those for nonpayment of renewal fees as provided in sections 71-110 and 71-149, as well as procedures for reinstatement of the same. In cases other than nonrenewal, the procedures in sections 71-149 and 71-150 for refusal to renew shall apply. The department, on the recommendation of the ~~appropriate professional board, of examiners of the licensee's, certificate holder's, or registrant's profession~~, may waive continuing education requirements, in part or in total, for any two-year ~~licensing, certification, or registration~~ credentialing period when a ~~licensee, certificate holder, or registrant~~ credentialed person submits documentation that circumstances beyond his or her control prevented completion of such requirements. Such circumstances shall include situations in which:

(a) The ~~licensee, certificate holder, or registrant~~ credentialed person holds a Nebraska ~~license, certificate, or registration~~ credential but is not practicing his or her profession or occupation in Nebraska;

(b) The ~~licensee, certificate holder, or registrant~~ credentialed person has served in the regular armed forces of the United States during part of the twenty-four months immediately preceding the renewal date;

(c) The ~~licensee, certificate holder, or registrant~~ credentialed person 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 the renewal date; and

(d) The licensee, certificate holder, or registrant credentialed person was first licensed, certified, or registered credentialed within the twenty-four months immediately preceding the renewal date.

The department, with the consent of the interested appropriate board, of examiners, may adopt and promulgate rules and regulations not inconsistent with this section pertaining to waiver of continuing education requirements.

(2) Each licensee, certificate holder, or registrant credentialed person 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 renewal application as may be designed by the department. Each licensee, certificate holder, or registrant credentialed person 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.

The appropriate examining board may biennially select, in a random manner, a sample of the renewal applications for audit of continuing education credits. Each licensee, certificate holder, or registrant credentialed person selected for audit shall be required to produce documentation of his or her attendance at the continuing education seminars listed on his or her renewal application.

Sec. 49. Section 71-161.13, Reissue Revised Statutes of Nebraska, is amended to read:

71-161.13. When any complaint has been filed in the office of the Department of Health and Human Services Regulation and Licensure with the department by any person or any report has been made to the Director of Regulation and Licensure by the Licensee Assistance Program under section 71-172.01 alleging that an applicant for a license, certificate, or registration credential or a person licensed, certified, or registered credentialed to practice any profession or occupation in the state regulated by the Department of Health and Human Services Regulation and Licensure department pursuant to Chapter 71 is suffering from habitual intoxication or dependence on or active addiction to alcohol or any controlled substance or narcotic drug, physical or mental illness, or physical or mental deterioration or disability, the Director of Regulation and Licensure shall investigate such complaint to determine if any reasonable cause exists to question the qualification of the applicant, licensee, certificate holder, or registrant or credentialed person to practice or to continue to practice such profession or occupation. If the director on the basis of such investigation or, in the absence of such complaint, upon the basis of his or her own independent knowledge finds that reasonable cause exists to question the qualification of the applicant, licensee, certificate holder, or registrant or credentialed person to practice such profession or occupation because of habitual intoxication or dependence on or active addiction to alcohol or any controlled substance or narcotic drug, physical or mental illness, or physical or mental deterioration or disability, he or she the director shall report such finding and evidence supporting it to the appropriate professional board of examiners in the profession or occupation of the applicant, licensee, certificate holder, or registrant, and if such board agrees that reasonable cause exists to question the qualification of such applicant or credentialed person, licensee, certificate holder, or registrant, it the board shall appoint a committee of three qualified physicians to examine the applicant, licensee, certificate holder, or registrant or credentialed person and to report their findings and conclusions to the board. The board shall then consider the findings and the conclusions of the physicians and any other evidence or material which may be submitted to that board by the applicant or credentialed person, licensee, certificate holder, or registrant, by the director, or by any other person and shall then determine if the applicant, licensee, certificate holder, or registrant or credentialed person is qualified to practice or to continue to practice such profession or occupation in the State of Nebraska. If such board finds the applicant, licensee, certificate holder, or registrant or credentialed person to be not qualified to practice or to continue to practice such profession or occupation because of habitual intoxication or dependence on or active addiction to alcohol or any controlled substance or narcotic drug, physical or mental illness, or physical or mental deterioration or disability, it the board shall so certify that fact to the director with a recommendation for the denial, refusal of renewal, limitation, suspension, or revocation of such license, certificate, or registration credential. The director shall thereupon deny, refuse renewal of, suspend, or revoke the license, certificate, or registration, credential or limit the license, certificate, or registration credential of the licensee, certificate

~~holder, or registrant credentialed person~~ to practice such profession or occupation in the state in such manner and to such extent as the director determines to be necessary for the protection of the public.

Sec. 50. Section 71-161.14, Reissue Revised Statutes of Nebraska, is amended to read:

71-161.14. The denial, refusal of renewal, limitation, suspension, or revocation of a ~~license, certificate, or registration credential~~ as provided in section 71-161.13 shall continue in effect until reversed on appeal or until the cause of such denial, refusal of renewal, limitation, suspension, or revocation no longer exists and the appropriate professional board of examiners in the profession or occupation of the applicant, former licensee, certificate holder, or registrant, or licensee, certificate holder, or registrant finds, upon competent medical evaluation by a qualified physician or physicians, that the applicant, former licensee, certificate holder, or registrant credentialed person, or licensee, certificate holder, or registrant credentialed person is qualified to engage in the practice of the profession or occupation for which he or she made application, for which he or she was formerly licensed, certified, or registered credentialed, or for which he or she was licensed, certified, or registered credentialed subject to limitation and certifies that fact to the Director of Regulation and Licensure. Upon such finding the director, notwithstanding the provision of any other statute, shall issue, return, or reinstate such ~~license, certificate, or registration credential~~ or remove any limitation on such ~~license, certificate, or registration credential~~ if the person is otherwise qualified as determined by the appropriate professional board of examiners in the relevant profession or occupation to practice or to continue in the practice of such the profession or occupation.

Sec. 51. Section 71-161.15, Reissue Revised Statutes of Nebraska, is amended to read:

71-161.15. Refusal of an applicant, ~~licensee, certificate holder, or registrant or credentialed person~~ to submit to a physical or mental examination requested by the appropriate professional board of examiners in the relevant profession or occupation pursuant to sections 71-161.12 to 71-161.16 to determine his or her qualifications to practice or to continue in the practice of the profession or occupation for which application was made or for which he or she is licensed, certified, or registered credentialed by the Department of Health and Human Services Regulation and Licensure department pursuant to the provisions of Chapter 71 shall be just cause for denial of the application or for refusal of renewal or suspension of his or her ~~license, certificate, or registration credential~~ automatically by the director until such examination has been made.

Sec. 52. Section 71-161.19, Reissue Revised Statutes of Nebraska, is amended to read:

71-161.19. No member of a professional board for any profession or occupation credentialed by the department pursuant to Chapter 71, no expert retained by such board, and no member of such profession or occupation who provides consultation to or testimony for the department shall be liable in damages to any person for slander, libel, defamation of character, breach of any privileged communication, or otherwise for any action taken or recommendation made within the scope of the functions of such board or expert or the consultation or testimony given by such person, if such board member, expert, or person acts without malice and in the reasonable belief that such action, recommendation, consultation, or testimony is warranted by the facts known to him or her after a reasonable effort is made to obtain the facts on which such action is taken, recommendation is made, or consultation or testimony is provided. No member of a board of examiners for any profession or occupation licensed or certified by the Department of Health and Human Services Regulation and Licensure pursuant to the provisions of Chapter 71 shall be liable in damages to any person for slander, libel, defamation of character, breach of any privileged communication, or otherwise for any action taken or recommendation made within the scope of the functions of such board, if such board member acts without malice and in the reasonable belief that such action or recommendation is warranted by the facts known to him or her after a reasonable effort is made to obtain the facts on which such action is taken or recommendation is made.

Sec. 53. Section 71-161.20, Reissue Revised Statutes of Nebraska, is amended to read:

71-161.20. (1) An applicant may apply to the Director of Regulation and Licensure for reinstatement only with an affirmative recommendation of the appropriate professional board, of examiners, and such application to the director may not be received or filed by the director unless accompanied by (a) the written recommendation of the board, including any finding of fact or

order of the board, (b) the application submitted to the board, (c) the record of hearing if any, and (d) any pleadings, motions, requests, preliminary or intermediate rulings and orders, and similar correspondence to or from the board and the petitioner.

(2) The director shall then review the application and other documents and may affirm the recommendation of the board and grant reinstatement or may reverse or modify the recommendation if the board's recommendation is (a) in excess of statutory authority, (b) made upon unlawful procedure, (c) unsupported by competent, material, and substantial evidence in view of the entire record, or (d) arbitrary or capricious.

Sec. 54. Section 71-162, Revised Statutes Supplement, 1998, is amended to read:

71-162. (1) The following fees shall be collected by the department and remitted to the State Treasurer:

(a) Not less than fifty dollars and not more than three hundred dollars for a license issued on the basis of an examination given by the department or organization specified by the department or for a license issued by reciprocity to practice audiology, athletic training, chiropractic, dental hygiene, dentistry, funeral directing and embalming, massage therapy, optometry, pharmacy, physical therapy, podiatry, respiratory care, speech-language pathology, veterinary medicine, or mental health practice, except that the fee for a provisional mental health practitioner license is as prescribed in subdivision (i) of this subsection;

(b) Not less than one hundred dollars and not more than six hundred dollars for a license issued on the basis of examination or by reciprocity to practice psychology;

(c) Not less than three hundred dollars and not more than seven hundred seventy-five dollars for a license issued on the basis of examination given by the department or organization specified by the department to practice medicine and surgery or osteopathic medicine, and not less than two hundred dollars and not more than five hundred dollars for a license issued by reciprocity to practice medicine and surgery or osteopathic medicine;

(d) For issuance or renewal of a certificate as a certified professional counselor or for certification by reciprocity, not less than twenty-five dollars and not more than five hundred dollars;

(e) For issuance or renewal of a certificate as a certified social worker or a certified master social worker, for issuance of a provisional certification as a master social worker, or for certification by reciprocity, not less than twenty-five dollars and not more than five hundred dollars;

(f) For issuance or renewal of a certificate as a certified marriage and family therapist or for certification by reciprocity, not less than twenty-five dollars and not more than five hundred dollars;

(g)(i) For a license to operate a massage therapy school, not less than one hundred dollars and not more than three hundred dollars, and for renewal of a license, not less than one hundred dollars and not more than four hundred dollars, and (ii) for a license to operate a massage therapy establishment, not less than one hundred dollars and not more than three hundred dollars, and for renewal of a license, not less than one hundred dollars and not more than four hundred dollars;

(h) For a license as a licensed medical nutrition therapist, not less than fifty dollars and not more than three hundred dollars. The fee for renewal of a license as a licensed medical nutrition therapist shall be not less than twenty dollars and not more than five hundred dollars. The fee for licensure by reciprocity shall be not less than fifty dollars and not more than three hundred dollars;

(i) For issuance of a provisional mental health practitioner license, not less than twenty-five dollars and not more than one hundred dollars;

(j) For the biennial renewal of a license to practice medicine and surgery, osteopathic medicine, psychology, or any of the professions enumerated in subdivision (a) of this subsection, not less than twenty dollars and not more than five hundred dollars;

(k) For a certified statement that a ~~licensee, certificate holder, or registrant~~ credentialed person is ~~licensed, certified, or registered~~ credentialed in this state, twenty-five dollars, and for verification that a ~~licensee, certificate holder, or registrant~~ credentialed person is ~~licensed, certified, or registered~~ credentialed in this state, five dollars; and

(l) For a duplicate original or reissued ~~license, certificate, or registration~~ credential, ten dollars.

All money paid as ~~licensure, certification, registration, credentialing~~ 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, upon the recommendation of the appropriate professional board, of examiners, shall adopt and promulgate rules and regulations to specify the fee to be charged for the cost of the licensure or certification examination, for licensure or certification, and for licensure or certification renewal in each profession enumerated in subsection (1) of this section. The fee for the licensure or certification examination shall not exceed the cost of such examination.

Sec. 55. Section 71-168, Revised Statutes Supplement, 1998, 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 licensee, certificate holder, or registrant listed under subsection (4) of this section and every member of a professional board of examiners shall furnish the department such evidence as he or she may have relative to any alleged violation which is being investigated.

(2) Every licensee, certificate holder, or registrant credentialed person listed under subsection (4) of this section shall report to the department the name of every person without a license, certificate, or registration credential that he or she has reason to believe is engaged in practicing any profession for which a license, certificate, or registration 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 of examiners for the profession may issue an order to cease and desist the unauthorized practice of that such profession as a measure to obtain licensure, certification, or registration of 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 licensee, certificate holder, or registrant 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 licensee, certificate holder, or registrant credentialed person regulated under the Advanced Registered Nurse Practitioner 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 Occupational Therapy Practice Act, the Uniform Controlled Substances Act, the Uniform Licensing Law, 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 practitioner 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 professional 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, 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 ~~practitioner~~ 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 ~~licensure, certification, registration,~~ 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 ~~license, certificate, registration,~~ 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 ~~license, certificate, registration,~~ 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 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 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. 56. Section 71-168.01, Reissue Revised Statutes of Nebraska, is amended to read:

71-168.01. (1) Any person may make a complaint and request investigation of an alleged violation of the Uniform Licensing Law or rules and regulations issued under such law. The department shall review all complaints and determine whether to conduct an investigation and in making such determination may consider factors such as:

(a) Whether the complaint pertains to a matter within the authority of the department to enforce;

(b) Whether the circumstances indicate that a complaint is made in good faith and is not malicious, frivolous, or vexatious;

(c) Whether the complaint is timely or has been delayed too long to justify present evaluation of its merit;

(d) Whether the complainant may be a necessary witness if action is taken and is willing to identify himself or herself and come forward to testify; or

(e) Whether the information provided or within the knowledge of the complainant is sufficient to provide a reasonable basis to believe that a violation has occurred or to secure necessary evidence from other sources.

A complaint submitted to the department shall be confidential, and a person making a complaint shall be immune from criminal or civil liability of any nature, whether direct or derivative, for filing a complaint or for disclosure of documents, records, or other information to the department.

(2) If the department determines that a complaint will not be investigated, the department shall notify the complainant of such determination. At the request of the complainant, the appropriate

professional board of examiners may review the complaint and provide its recommendation to the department on whether the complaint merits investigation.

(3) A professional board of examiners may designate one of its professional members to serve as a consultant to the department in reviewing complaints and on issues of professional practice that may arise during the course of an investigation. Such consultation shall not be required for the department to evaluate a complaint or to proceed with an investigation. A board may also recommend or confer with a consultant member of its profession to assist the board or department on issues of professional practice.

(4) The department may notify the licensee, certificate holder, or registrant credentialed person that a complaint has been filed and that an investigation will be conducted except when the department determines that such notice may prejudice an investigation.

(5) The department shall advise the appropriate professional board of examiners on the progress of investigations. If requested by the complainant, the identity of the complainant shall not be released to the board. When the department determines that an investigation is complete, the department shall consult with the board to obtain its recommendation for submission to the Attorney General. In making a recommendation, the board may review all investigative reports and have full access to the investigational file of the department and any previous investigational information in the files of the department on the licensee, certificate holder, or registrant credentialed person that may be relevant to the investigation, except that reports or other documents of any law enforcement agency provided to the department shall not be available for board review except to the extent such law enforcement agency gives permission for release to the board and reports provided by any other agency or public or private entity, which reports are confidential in that agency's or entity's possession and are provided with the express expectation that the report will not be disclosed, may be withheld from board review. The recommendation of the board shall be made part of the completed investigational report of the department and submitted to the Attorney General. The recommendation of the board shall include, but not be limited to:

(a) The specific violations of statute, regulation, or both that the board finds substantiated based upon the investigation;

(b) Matters which the board believes require additional investigation; and

(c) The disposition or possible dispositions that the board believes appropriate under the circumstances.

(6) If the department and the board disagree on the basis for investigation or if the board recommends additional investigation and the department and board disagree on the necessity of additional investigation, the matter shall be forwarded to the Attorney General for review and determination.

(7) Complaints, or investigational records, reports, and files of any kind of the department shall not be public records, shall not be subject to subpoena or discovery, and shall be inadmissible in evidence in any legal proceeding of any kind or character except a contested case before the department. Such complaints, investigational or records, reports, and files shall be a public record if made part of the record of a contested case before the department. No person, including, but not limited to, department employees and members of a professional board, having access to such complaints, or investigational records, reports, or files shall disclose such records or information in violation of this section, except that the department may exchange such information with law enforcement and other state licensing agencies as necessary and appropriate in the discharge of the department's duties and only under circumstances to ensure against unauthorized access to such information. Violation of this subsection is ~~shall be~~ a Class I misdemeanor.

(8) All meetings of the professional boards of examiners or between a board and staff of the department or the Attorney General on investigatory matters shall be held in closed session, including the voting of the board on any matter pertaining to the investigation or recommendation.

Sec. 57. Section 71-170, Reissue Revised Statutes of Nebraska, is amended to read:

71-170. The ~~Department of Health and Human Services Regulation and Licensure~~ department shall have printed in pamphlet form for each profession the following matter which is pertinent to the particular profession for which such pamphlet is published: (1) The law regulating the practice of the profession; (2) the rules of the department relative to licenses, certificates, and registrations credentials; and (3) the rules relating to

examinations adopted by the department on the recommendation of the professional board of examiners.

Sec. 58. Section 71-171.01, Reissue Revised Statutes of Nebraska, is amended to read:

71-171.01. The department shall provide the Attorney General with a copy of all complaints it receives and advise the Attorney General of investigations it makes which may involve any possible violation of statutes or rules and regulations by the licensee, certificate holder, or registrant credentialed person. The Attorney General shall then determine which, if any, statutes, rules, or regulations the licensee, certificate holder, or registrant credentialed person has violated and the appropriate legal action to take. The Attorney General may: (1) Elect to file a petition under section 71-150 or not to file a petition; (2) negotiate a voluntary surrender or voluntary limitation pursuant to section 71-161.11; or (3) in cases involving a technical or insubstantial violation, refer the matter to the appropriate professional board of examiners for the opportunity to resolve the matter by issuance of a letter of concern or to recommend to the Attorney General that he or she enter into an assurance of compliance with the licensee, certificate holder, or registrant credentialed person in lieu of filing a petition. Neither a letter of concern nor an assurance of compliance shall constitute discipline against a licensee, certificate holder, or registrant credentialed person.

Sec. 59. Section 71-171.02, Revised Statutes Supplement, 1998, is amended to read:

71-171.02. Upon referral of a matter under section 71-171.01 by the Attorney General, the professional board of examiners may:

(1) Send to the licensee, certificate holder, or registrant credentialed person a letter of concern, approved by the Attorney General, which includes a statement of the statute, rule, or regulation in question and a statement advising the licensee, certificate holder, or registrant credentialed person of the conduct that would violate such statute, rule, or regulation. Such letter shall be signed by the board and shall become a part of the public record of the licensee, certificate holder, or registrant credentialed person;

(2) Advise the Attorney General on the content of an agreement to serve as the basis of an assurance of compliance. The Attorney General may contact the licensee, certificate holder, or registrant credentialed person to reach, by voluntary agreement, an assurance of compliance. The assurance shall include a statement of the statute, rule, or regulation in question, a description of the conduct that would violate such statute, rule, or regulation, the assurance of the licensee, certificate holder, or registrant credentialed person that he or she will not engage in such conduct, and acknowledgment by the licensee, certificate holder, or registrant credentialed person that violation of the assurance constitutes unprofessional conduct as provided by subdivision (17) of section 71-148. Such assurance shall be signed by the licensee, certificate holder, or registrant credentialed person and shall become a part of the public record of the licensee, certificate holder, or registrant credentialed person. The licensee, certificate holder, or registrant credentialed person shall not be required to admit to any violation of the law and the assurance shall not be construed as such an admission; or

(3) Recommend that the Attorney General file a petition under section 71-150.

Sec. 60. Section 71-174.01, Revised Statutes Supplement, 1998, is amended to read:

71-174.01. Each Nebraska-licensed podiatrist in active practice within the State of Nebraska shall be required on or before April 1 of each even-numbered year, ~~commencing in 1986~~, to attend twenty-four hours biennially of such approved scientific schools, clinics, forums, lectures, or podiatric educational seminars, as may be announced and approved by the Board of ~~Examiners in Podiatry~~, as a prerequisite for the licensee's next subsequent license renewal if at least twenty-four hours of such educational program are conducted biennially in the State of Nebraska.

Each licensed podiatrist in active practice within the State of Nebraska shall, on or before April 1 of each even-numbered year, certify on an affidavit form provided by the ~~Board of Examiners in Podiatry~~ board that he or she has complied with this section during the preceding two-year period. Such board ~~of examiners~~ shall, on or before April 1 of each even-numbered year, report all licensees who have complied with the educational requirements to the Department of Health and Human Services Regulation and Licensure department. 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 and as provided in sections 71-110 and 71-149. The department, on the recommendation of the ~~Board of Examiners in Podiatry~~ board, may waive continuing education requirements, in part or in total, for any two-year licensing period when a licensee submits documentation that circumstances beyond his or her control prevented completion of such requirements. Such circumstances shall include situations in which:

(1) The licensee holds a Nebraska license but is not practicing podiatry in Nebraska;

(2) 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;

(3) 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

(4) The licensee was first licensed within the twenty-four months immediately preceding the renewal date provided in section 71-110.

The department, with the consent of the ~~Board of Examiners in Podiatry~~ board, may adopt and promulgate rules and regulations not inconsistent with this section pertaining to waiver of continuing education requirements.

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.

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 the continuing education seminars listed on his or her renewal application.

Sec. 61. Section 71-175, Reissue Revised Statutes of Nebraska, is amended to read:

71-175. Every applicant for an initial license to practice podiatry shall (1) present proof of graduation from a school of chiropody or podiatry approved by the department on recommendation of the ~~board of examiners~~ Board of Podiatry, (2) present proof of completion of a minimum one-year postgraduate residency program approved by the Council on Podiatric Medical Education of the American Podiatric Medical Association, and (3) pass a written examination which consists of (a) parts I and II of the examination given by the National Board of Podiatric Medical Examiners and (b) the written examination prescribed by the Board of ~~Examiners in~~ Podiatry. Every applicant for a license to practice podiatry shall be required to pay the fee prescribed in section 71-162.

Sec. 62. Section 71-175.01, Reissue Revised Statutes of Nebraska, is amended to read:

71-175.01. The Board of ~~Examiners in~~ Podiatry may in its discretion authorize the issuance of a license as podiatrist, without examination, to a person who is duly licensed by examination in another state, a territory, or the District of Columbia, in which, under like conditions, reciprocal licensing as a podiatrist, without examination, is granted to a podiatrist duly licensed by examination in this state. The applicant shall produce evidence satisfactory to the board that he or she meets the requirements of subdivisions (1) ~~to~~ through (6) of section 71-139 and that he or she holds a certificate from the proper licensing authority from the state, territory, or District of Columbia from whence he or she comes certifying that the applicant is duly licensed, that his or her license has never been suspended or revoked, and that so far as the records of such authority are concerned, the applicant is entitled to its endorsement. An applicant for reciprocal registration coming from any state, any territory, or the District of Columbia may in the discretion of the Board of ~~Examiners in~~ Podiatry be licensed by reciprocity, ~~PROVIDED, his~~ if his or her individual qualifications meet the Nebraska legal requirements.

Sec. 63. Section 71-176.01, Reissue Revised Statutes of Nebraska, is amended to read:

71-176.01. (1) On and after January 1, 1996, a person employed exclusively in the office or clinic of a licensed podiatrist shall not perform

any of the functions described in subsection (2) of section 71-3515.01 as a part of such employment unless the person is (a) licensed as a limited radiographer under the Radiation Control Act or (b) certified as provided in this section.

(2) The Board of ~~Examiners in~~ Podiatry may certify a person to perform medical radiography on the anatomical regions of the ankle and foot if such person (a) has completed a fifteen-hour course of instruction, approved by the board, on radiation hygiene and podiatric radiological practices, including radiation health and safety, lower extremity anatomy, physics, concepts, physiology, techniques, positioning, equipment maintenance, and minimization of radiation exposure, and (b) passed a competency examination administered by the board.

Sec. 64. Section 71-176.03, Reissue Revised Statutes of Nebraska, is amended to read:

71-176.03. The Board of ~~Examiners in~~ Podiatry shall provide the Attorney General with copies of all complaints it receives which allege or may involve possible statutory violations by the licensee. The Attorney General shall determine the appropriate legal action, if any, to take against the licensee.

Sec. 65. Section 71-179, Reissue Revised Statutes of Nebraska, is amended to read:

71-179. Every applicant for a license to practice chiropractic shall (1) present proof of graduation from an accredited college of chiropractic and (2) pass an examination which consists of the following components: (a) Parts I and II of the examination given by the National Board of Chiropractic Examiners; (b) the written Clinical Competency Test given by the National Board of Chiropractic Examiners; and (c) the practical examination given by the Board of ~~Examiners in~~ Chiropractic.

Sec. 66. Section 71-179.01, Reissue Revised Statutes of Nebraska, is amended to read:

71-179.01. Each Nebraska-licensed chiropractor in active practice within the State of Nebraska shall be required, ~~on or before August 1, 1986,~~ and on or before August 1 of every even-numbered year, ~~thereafter,~~ to attend not less than four days totaling at least thirty hours biennially of such approved scientific schools, clinics, forums, lectures, or chiropractic educational seminars, as may be approved by the Board of ~~Examiners in~~ Chiropractic, as a prerequisite for his or her next subsequent license renewal if at least thirty hours of class instruction is conducted biennially in the State of Nebraska.

Sec. 67. Section 71-180, Reissue Revised Statutes of Nebraska, is amended to read:

71-180. An accredited college of chiropractic within the meaning of the Uniform Licensing Law shall be (1) one which is recognized by the ~~Department of Health and Human Services Regulation and Licensure department~~ upon the recommendation of the ~~chiropractic board of examiners~~ Board of Chiropractic, (2) a legally chartered college of chiropractic requiring for admission a diploma from an accredited high school or its equivalent and, beginning with students entering a college of chiropractic on or after January 1, 1974, at least two years credit from an accredited college or university of this or some other state, which requirement shall be regularly published in each prospectus or catalog issued by such institution, (3) one which conducts a clinic for patients in which its students are required to regularly participate in the care and adjustment of patients, (4) one giving instruction in anatomy, orthopedics, physiology, embryology, chemistry, pathology, health ecology, bacteriology, symptomatology, histology, spinal analysis, diagnosis, roentgenology, neurology, and principles and practice of chiropractic, and (5) one requiring an actual attendance for four college years totaling not less than four thousand hours.

Sec. 68. Section 71-183.01, Reissue Revised Statutes of Nebraska, is amended to read:

71-183.01. Nothing in section 71-183 shall apply to the following practices, acts, and operations:

(1) To the practice of his or her profession by a physician or surgeon licensed as such under the laws of this state unless he or she practices dentistry as a specialty;

(2) To the giving by a qualified anesthetist or registered nurse of an anesthetic for a dental operation under the direct supervision of a licensed dentist or physician;

(3) The practice of dentistry in the discharge of their official duties by graduate dentists or dental surgeons in the United States Army, Navy, Public Health Service, Coast Guard, or Department of Veterans Affairs;

(4) The practice of dentistry by a licensed dentist of other states

or countries at meetings of the Nebraska Dental Association or components thereof, or other like dental organizations approved by the ~~board~~ Board of Dentistry, while appearing as clinicians;

(5) To the filling of work authorizations of a licensed and registered dentist as provided in this subdivision by any person or persons, association, corporation, or other entity for the construction, reproduction, or repair of prosthetic dentures, bridges, plates, or appliances to be used or worn as substitutes for natural teeth if such person or persons, association, corporation, or other entity does not solicit or advertise, directly or indirectly by mail, card, newspaper, pamphlet, radio, or otherwise, to the general public to construct, reproduce, or repair prosthetic dentures, bridges, plates, or other appliances to be used or worn as substitutes for natural teeth;

(6) To the use of roentgen or X-ray machines or other rays for making radiograms or similar records of dental or oral tissues under the supervision of a licensed dentist or physician if such service is not advertised by any name whatever as an aid or inducement to secure dental patronage, and no person shall advertise that he or she has, leases, owns, or operates a roentgen or X-ray machine for the purpose of making dental radiograms of the human teeth or tissues or the oral cavity or administering treatment thereto for any disease thereof;

(7) To the performance by a licensed dental hygienist, under the supervision of a licensed dentist, of the oral prophylaxis procedure which shall include the scaling and polishing of teeth and such additional procedures as are prescribed in accordance with rules and regulations adopted by the Department of Health and Human Services Regulation and Licensure department;

(8) To the performance by a dental auxiliary other than a licensed dental hygienist, under the supervision of a licensed dentist, of duties prescribed in accordance with rules and regulations adopted by the Department of Health and Human Services Regulation and Licensure department; or

(9) To the performance by a licensed dental hygienist, by virtue of training and professional ability, under the supervision of a licensed dentist, of taking dental roentgenograms. Any other person is hereby authorized, under the supervision of a licensed dentist, to take dental roentgenograms but shall not be authorized to do so until he or she has satisfactorily completed a course in dental radiology recommended by the Board of Examiners in Dentistry board and approved by the Department of Health and Human Services Regulation and Licensure department.

Sec. 69. Section 71-185, Reissue Revised Statutes of Nebraska, is amended to read:

71-185. Every applicant for a license to practice dentistry shall (1) present proof of graduation from an accredited school or college of dentistry and (2) pass an examination prescribed by the Board of ~~Examiners in Dentistry~~ which shall be elementary and practical in character but sufficiently thorough to test the fitness of the candidate to practice dentistry. Such examination shall include questions on anatomy, physiology, chemistry, dental materials, materia medica, therapeutics, histology, pathology, oral surgery, operative and prosthetic dentistry, dental jurisprudence, and such other subjects as are usually found in the curriculum of a dental college. Demonstrations of the applicant's skill in clinical dentistry shall also be required.

The department shall accept, upon the recommendation of the ~~Board of Examiners in Dentistry~~ board and in lieu of the examination, a certificate of examination issued by the National Board of Dental Examiners of the United States of America. Every applicant for a license upon the basis of such certificate shall be required to pay the fee prescribed in section 71-162 for licenses issued in dentistry without examination based upon a certificate by examination held by the National Board of Dental Examiners of the United States of America.

~~Standards Commencing in 1985, standards~~ for relicensure for each Nebraska-licensed dentist and dental hygienist within the State of Nebraska shall require that such dentist or dental hygienist biennially complete thirty hours of continuing education as prescribed in sections 71-161.09 and 71-161.10 by ~~no later than March 1, 1987, and an additional thirty hours by no later than March 1 of each odd-numbered year. thereafter.~~

Sec. 70. Section 71-185.01, Reissue Revised Statutes of Nebraska, is amended to read:

71-185.01. (1) For purposes of this section, practitioner's facility shall mean a facility in which a licensed dentist practices his or her profession, other than a facility licensed pursuant to Chapter 71, article 20.

(2) The department shall adopt and promulgate ~~Department of Health and Human Services Regulation and Licensure~~ shall prescribe rules and regulations, ~~duly adopted and promulgated~~ and which are approved by the State Board of Health, for practitioners' facilities in order to insure that such facilities are safe and sanitary and use precautions necessary to prevent the creation and spread of infectious and contagious diseases. Based upon a formal complaint, the ~~Department of Health and Human Services Regulation and Licensure~~ department or its employees may inspect any practitioner's facility in this state to insure compliance with such regulations.

(3) Within thirty days after an inspection of a practitioner's facility which the ~~Department of Health and Human Services Regulation and Licensure~~ department or its employees find to be in violation of its rules and regulations, the department shall notify the Board of ~~Examiners in Dentistry~~ of its findings in writing. The department shall file a petition for disciplinary action pursuant to section 71-150 if the violation of the rules and regulations is not corrected within thirty days after the licensee has received notice of such violation. The department shall send a written progress report of its inspection and actions taken to the ~~Board of Examiners in Dentistry board~~.

(4) It shall be considered unprofessional conduct for a licensee to practice in a facility that does not comply with the rules and regulations regarding sanitary practitioners' facilities.

Sec. 71. Section 71-185.02, Reissue Revised Statutes of Nebraska, is amended to read:

71-185.02. The department upon recommendation of the Board of ~~Examiners in Dentistry~~ shall issue a temporary license to any person who (1) has met the requirements for a license as set forth in section 71-185 and who is enrolled in an accredited school or college of dentistry for the purpose of completing a postgraduate or residency program in dentistry and (2) is licensed in another jurisdiction under conditions which the board finds equivalent to the requirements of the State of Nebraska for obtaining a license to practice dentistry.

Any person who desires a temporary license shall make application to the department. Such application shall be accompanied by the required fee for licensure as specified in section 71-162.

The temporary license shall be issued for a period of one year and, upon application to the department, renewed annually without the licensee having to pay a renewal fee.

The temporary licensee shall be entitled to practice dentistry, including prescribing legend drugs and controlled substances, only under the auspices of the postgraduate or residency program in which he or she is enrolled.

Sec. 72. Section 71-186, Reissue Revised Statutes of Nebraska, is amended to read:

71-186. An accredited school within the meaning of the Uniform Licensing Law shall be one approved by the ~~Department of Health and Human Services Regulation and Licensure~~ department upon the recommendation of the ~~board of examiners~~ Board of Dentistry. It shall be a school or college which maintains the standards approved by the American Dental Association, and which publishes regularly a catalog giving the requirements for graduation and degrees as specified ~~herein~~ in the Uniform Licensing Law.

Sec. 73. Section 71-193.04, Reissue Revised Statutes of Nebraska, is amended to read:

71-193.04. Any person (1) of good moral character, (2) who has attained the age of eighteen years, and (3) who is a graduate of a training school for dental hygienists that is approved by the Board of ~~Examiners in Dentistry~~ and that requires a course of not less than two academic years may be examined by such board on the subjects considered essential by it for a dental hygienist. Upon passage of the examination, the board shall recommend to the department that a license to practice as a dental hygienist be issued.

Sec. 74. Section 71-193.14, Reissue Revised Statutes of Nebraska, is amended to read:

71-193.14. The Board of ~~Examiners in Dentistry~~ shall recommend rules and regulations to the ~~department~~ Department of Health and Human Services Regulation and Licensure governing the performance of duties by licensed dental hygienists and other dental auxiliaries. The ~~department~~ Department of Health and Human Services Regulation and Licensure shall adopt rules and regulations for such purpose upon the recommendations being submitted by the ~~Board of Examiners in Dentistry board~~.

Sec. 75. Section 71-193.18, Reissue Revised Statutes of Nebraska, is amended to read:

71-193.18. (1) A licensed dental hygienist may monitor nitrous

oxide analgesia under the indirect supervision of a licensed dentist.

(2) A licensed dental hygienist may be approved by the ~~Department of Health and Human Services Regulation and Licensure~~ department, upon the recommendation of the Board of ~~Examiners in Dentistry~~, to administer local anesthesia under the indirect supervision of a licensed dentist. The department may, upon the recommendation of the board, prescribe by rule and regulation: The necessary education and preparation, which shall include, but not be limited to, instruction in the areas of head and neck anatomy, osteology, physiology, pharmacology, medical emergencies, and clinical techniques; the necessary clinical experience; and the necessary examination for purposes of determining the competence of licensed dental hygienists to administer local anesthesia.

Upon the recommendation of the ~~Board of Examiners in Dentistry~~ board, the department may approve successful completion after July 1, 1994, of a course of instruction to determine competence to administer local anesthesia. The course of instruction must be 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. The course of instruction must be taught by a faculty member or members of the institution presenting the course. The ~~Department of Health and Human Services Regulation and Licensure~~ department may approve for purposes of this subsection a course of instruction if such course includes:

(a) At least twelve clock hours of classroom lecture, including instruction in (i) medical history evaluation procedures, (ii) anatomy of the head, neck, and oral cavity as it relates to administering local anesthetic agents, (iii) pharmacology of local anesthetic agents, vasoconstrictor, and preservatives, including physiologic actions, types of anesthetics, and maximum dose per weight, (iv) systemic conditions which influence selection and administration of anesthetic agents, (v) signs and symptoms of reactions to local anesthetic agents, including monitoring of vital signs, (vi) management of reactions to or complications associated with the administration of local anesthetic agents, (vii) selection and preparation of the armamentaria for administering various local anesthetic agents, and (viii) methods of administering local anesthetic agents;

(b) At least twelve clock hours of clinical instruction during which time at least three injections of each of the anterior, middle and posterior superior alveolar, naso and greater palatine, infraorbital, inferior alveolar, lingual, mental, long buccal, and infiltration injections are administered; and

(c) Procedures, which shall include an examination, for purposes of determining whether the hygienist has acquired the necessary knowledge and proficiency to administer local anesthetic agents.

(3) No dental hygienist licensed in this state shall be approved to administer local anesthesia unless such person submits to the ~~Board of Examiners in Dentistry~~ board a fee of not less than twenty dollars nor more than one hundred dollars as determined by the ~~Department of Health and Human Services Regulation and Licensure~~ department upon the recommendation of the board.

Sec. 76. Section 71-193.20, Reissue Revised Statutes of Nebraska, is amended to read:

71-193.20. The ~~Department of Health and Human Services Regulation and Licensure~~ department upon the recommendation of the Board of ~~Examiners in Dentistry~~ may adopt and promulgate rules and regulations providing for employment or work-setting facilities required for the provision of dental services by a licensed dental hygienist.

Sec. 77. Section 71-193.22, Reissue Revised Statutes of Nebraska, is amended to read:

71-193.22. As used in the Dental Anesthesia Act, unless the context otherwise requires:

(1) Analgesia shall mean the diminution or elimination of pain in the conscious patient;

(2) Board shall mean the Board of ~~Examiners in Dentistry~~;

(3) Department shall mean the Department of Health and Human Services Regulation and Licensure;

(4) General anesthesia shall mean a controlled state of unconsciousness accompanied by a partial or complete loss of protective reflexes, including the inability to independently maintain an airway and respond purposefully to physical stimulation or verbal command, and produced by a pharmacologic or nonpharmacologic method or a combination thereof;

(5) Inhalation analgesia shall mean the administration of nitrous oxide and oxygen to diminish or eliminate pain in a conscious patient;

(6) Parenteral shall mean administration other than through the digestive tract, including, but not limited to, intravenous administration; and

(7) Sedation shall mean a depressed level of consciousness in which the patient's ability to independently and continuously maintain an airway and respond appropriately to physical stimulation or verbal command is retained and which is produced by a pharmacologic or nonpharmacologic method or a combination thereof.

Sec. 78. Section 71-1,103, Revised Statutes Supplement, 1998, is amended to read:

71-1,103. The following classes of persons shall not be construed to be engaged in the unauthorized practice of medicine:

- (1) Persons rendering gratuitous services in cases of emergency;
- (2) Persons administering ordinary household remedies;
- (3) The members of any church practicing its religious tenets, except that they shall not prescribe or administer drugs or medicines, perform surgical or physical operations, nor assume the title of or hold themselves out to be physicians or surgeons, and such members shall not be exempt from the quarantine laws of this state;
- (4) Students of medicine and surgery who are studying in an accredited school or college of medicine and who gratuitously prescribe for and treat disease under the supervision of a licensed physician;
- (5) Physicians and surgeons of the United States Armed Forces or Public Health Service or United States Department of Veterans Affairs when acting in the line of such duty in this state;
- (6) Physicians and surgeons who are graduates of an accredited school or college of medicine with the degree of Doctor of Medicine and licensed in another state when incidentally called into this state for consultation with a physician and surgeon licensed in this state;
- (7) Physicians and surgeons who are graduates of an accredited school or college of medicine with the degree of Doctor of Medicine and who reside in a state bordering this state and who are duly licensed under the laws thereof to practice medicine and surgery but who do not open an office or maintain or appoint a place to meet patients or to receive calls within this state unless they are performing services described in subdivision (7) of section 71-1,102;
- (8) Persons providing or instructing as to use of braces, prosthetic appliances, crutches, contact lenses, and other lenses and devices prescribed by a doctor of medicine licensed to practice while working under the direction of such physician;
- (9) Dentists practicing their profession when licensed and practicing in accordance with sections 71-183 to 71-191;
- (10) Optometrists practicing their profession when licensed and practicing under and in accordance with sections 71-1,133 to 71-1,136;
- (11) Osteopathic physicians practicing their profession if licensed and practicing under and in accordance with sections 71-1,137 and 71-1,141;
- (12) Chiropractors practicing their profession if licensed and practicing under sections 71-177 to 71-182;
- (13) Podiatrists practicing their profession when licensed and practicing under and in accordance with sections 71-173 to 71-176;
- (14) Psychologists practicing their profession when licensed and practicing under and in accordance with sections 71-1,206.01 to 71-1,206.31;
- (15) Advanced registered nurse practitioners and certified registered nurse anesthetists practicing their profession when licensed and practicing under and in accordance with the Advanced Registered Nurse Practitioner Act;
- (16) Any person licensed or certified under the laws of this state to practice a limited field of the healing art, not specifically named in this section, when confining themselves strictly to the field for which they are licensed or certified, not assuming the title of physician, surgeon, or physician and surgeon, and not professing or holding themselves out as qualified to prescribe drugs in any form or to perform operative surgery;
- (17) Physicians and surgeons who are duly licensed to practice medicine and surgery in another state who have been recommended by the secretary of the board of examiners in the state of licensure and who have been granted temporary practice rights by the Board of ~~Examiners in~~ Medicine and Surgery, with the approval of the ~~Department of Health and Human Services Regulation and Licensure~~ department, for a period not to exceed three months in any twelve-month period;
- (18) Persons obtaining blood specimens while working under an order of or protocols and procedures approved by a physician, registered nurse, or other independent health care practitioner licensed to practice by the state

if the scope of practice of that practitioner permits the practitioner to obtain blood specimens; and

(19) Any other trained person employed by a licensed institution or facility which is defined in section 71-2017.01 or clinical laboratory certified pursuant to the Nebraska Clinical Laboratories Certification Act, the federal Clinical Laboratory Improvement Act of 1967, as amended, or Title XVIII or XIX of the federal Social Security Act to withdraw human blood for scientific or medical purposes.

Every act or practice falling within the practice of medicine and surgery as defined not specially excepted in this section shall constitute the practice of medicine and surgery and may be performed in this state only by those licensed by law to practice medicine in Nebraska.

Sec. 79. Section 71-1,104, Reissue Revised Statutes of Nebraska, is amended to read:

71-1,104. (1) Each applicant for a license to practice medicine and surgery shall (a)(i) present proof that he or she is a graduate of an accredited school or college of medicine, (ii) if a foreign medical graduate, provide a copy of a permanent certificate issued by the Educational Commission on Foreign Medical Graduates that is currently effective and relates to such applicant or provide such credentials as are necessary to certify that such foreign medical graduate has successfully passed the Visa Qualifying Examination or its successor or equivalent examination required by the United States Department of Health and Human Services and the United States Immigration and Naturalization Service, or (iii) if a graduate of a foreign medical school who has successfully completed a program of American medical training designated as the Fifth Pathway and who additionally has successfully passed the Educational Commission on Foreign Medical Graduates examination but has not yet received the permanent certificate attesting to the same, provide such credentials as certify the same to the Department of Health and Human Services Regulation and Licensure, (b) present proof that he or she has served at least one year of graduate medical education approved by the Board of ~~Examiners in~~ Medicine and Surgery or, if a foreign medical graduate, present proof that he or she has served at least three years of graduate medical education approved by the board, and (c) pass a licensing examination designated by the board and the department covering appropriate medical subjects.

(2) The department, upon the recommendation of the board, may waive any requirement for more than one year of approved graduate medical education, as set forth in subdivision (1)(b) of this section, if the applicant has served at least one year of graduate medical education approved by such board and if the following conditions are met:

(a) The applicant meets all other qualifications for a license to practice medicine and surgery;

(b) The applicant submits satisfactory proof that the issuance of a license based on the waiver of the requirement of more than one year of approved graduate medical education will not jeopardize the health, safety, and welfare of the citizens of this state; and

(c) The applicant submits proof that he or she will enter into the practice of medicine in a health profession shortage area designated as such by the Nebraska Rural Health Advisory Commission immediately upon obtaining a license to practice medicine and surgery based upon a waiver of the requirement for more than one year of graduate medical education.

(3) A license issued on the basis of such a waiver shall be subject to the limitation that the licensee continue in practice in the health profession shortage area and such other limitations, if any, deemed appropriate under the circumstances by the Director of Regulation and Licensure, upon recommendation of the board, which may include, but shall not be limited to, supervision by a medical practitioner, training, education, and scope of practice. After two years of practice under a limited license issued on the basis of a waiver of the requirement of more than one year of graduate medical education, a licensee may apply to the department for removal of the limitations. The director, upon the recommendation of the board, may grant or deny such application or may continue the license with limitations. The fee for a license to practice medicine and surgery based on a waiver of the requirement of more than one year of graduate medical education and the renewal of such license shall be the same as the fees prescribed in section 71-162.

(4) In addition to any other grounds for disciplinary action against the license contained in the Uniform Licensing Law, the department may take disciplinary action against a license granted on the basis of a waiver of the requirement of more than one year of graduate medical education for violation of the limitations on the license. The department, upon the recommendation of

the board, shall adopt and promulgate rules and regulations for the purpose of implementing and administering this section.

Sec. 80. Section 71-1,104.06, Reissue Revised Statutes of Nebraska, is amended to read:

71-1,104.06. The Board of ~~Examiners in~~ Medicine and Surgery shall provide the Attorney General with copies of all complaints it receives which allege or may involve possible statutory violations by the licensee. The Attorney General shall determine the appropriate legal action to take, if any, against the licensee.

Sec. 81. Section 71-1,105, Reissue Revised Statutes of Nebraska, is amended to read:

71-1,105. An accredited school or college of medicine for the purpose of the Uniform Licensing Law shall be one approved by the ~~Department of Health and Human Services Regulation and Licensure department~~ upon the recommendation of the Board of ~~Examiners in~~ Medicine and Surgery, and ~~it~~ such school or college shall meet and maintain generally minimum standards prescribed by the ~~Board of Examiners in Medicine and Surgery board~~. Such minimum standards shall apply equally to all accredited schools, and any school to be accredited shall permit inspections by the department.

A school or college of osteopathic medicine and surgery fulfilling all the foregoing requirements shall not be refused standing as an accredited medical school because it may also specialize in giving instruction according to any special system of healing.

Sec. 82. Section 71-1,106, Reissue Revised Statutes of Nebraska, is amended to read:

71-1,106. (1) Each applicant shall be examined in accordance with the teachings of the school of medicine which he or she desires to practice.

(2) The members of the Board of ~~Examiners in~~ Medicine and Surgery need not be present at the examination given to applicants for licensure when a national standardized examination is utilized. Such board may delegate the administration of such examination to the ~~Department of Health and Human Services Regulation and Licensure department~~ or another person. A majority of the members of such board shall be present at any other written examination given to applicants for licensure.

At least a majority of the members of the board shall be present at any oral examination given. The oral examination questions shall be limited to the technical knowledge of the practice of medicine and surgery.

Sec. 83. Section 71-1,107.01, Reissue Revised Statutes of Nebraska, is amended to read:

71-1,107.01. For the purposes of sections 71-1,107.01 to 71-1,107.14, unless the context otherwise requires:

(1) Temporary educational permit shall mean a permit to practice medicine and surgery, osteopathic medicine and surgery, or any of their allied specialties in a supervised educational program approved by the Board of ~~Examiners in~~ Medicine and Surgery;

(2) Graduate medical education shall mean a period of supervised educational training by a graduate of an accredited school or college of medicine or an accredited school or college of osteopathic medicine, which training has been approved by the ~~Department of Health and Human Services Regulation and Licensure department~~ upon recommendation of the ~~Board of Examiners in Medicine and Surgery board~~;

(3) Visiting faculty permit shall mean a permit for a physician qualified by virtue of previous medical training and experience to teach students of medicine, to conduct research, or both;

(4) Accredited hospital shall mean a hospital accredited by the ~~Department of Health and Human Services Regulation and Licensure department~~ upon recommendation of the ~~Board of Examiners in Medicine and Surgery board~~;

(5) Accredited school or college of medicine shall mean any school or college of medicine accredited as such pursuant to the laws of the State of Nebraska; and

(6) An accredited school or college of osteopathic medicine shall mean any school or college of osteopathic medicine accredited as such under the laws of the State of Nebraska.

Sec. 84. Section 71-1,107.02, Reissue Revised Statutes of Nebraska, is amended to read:

71-1,107.02. The ~~Department of Health and Human Services Regulation and Licensure department~~, upon the recommendation of the Board of ~~Examiners in~~ Medicine and Surgery, shall have authority, in ~~its~~ the department's discretion, to issue temporary educational permits and visiting faculty permits to qualified applicants in accordance with ~~the provisions of~~ sections 71-1,107.01 to 71-1,107.14.

Sec. 85. Section 71-1,107.04, Reissue Revised Statutes of Nebraska,

is amended to read:

71-1,107.04. Before any temporary educational permit or visiting faculty permit is issued pursuant to sections 71-1,107.01 to 71-1,107.14, the ~~Department of Health and Human Services Regulation and Licensure department~~, upon recommendation of the Board of ~~Examiners in~~ Medicine and Surgery, shall first determine that the applicant for such permit is of good moral character and that such applicant has otherwise met all of the requirements of sections 71-1,107.01 to 71-1,107.14 relating to issuing any such permit.

Sec. 86. Section 71-1,107.05, Reissue Revised Statutes of Nebraska, is amended to read:

71-1,107.05. Except as otherwise provided by law, the holder of any temporary educational permit or visiting faculty permit shall be subject to all of the rules and regulations prescribed for physicians regularly licensed in the State of Nebraska and such other rules and regulations as may be adopted by the ~~Department of Health and Human Services Regulation and Licensure department~~ upon the recommendation of the Board of ~~Examiners in~~ Medicine and Surgery with respect to such permits in order to carry out ~~the purposes of~~ sections 71-1,107.01 to 71-1,107.14.

Sec. 87. Section 71-1,107.09, Reissue Revised Statutes of Nebraska, is amended to read:

71-1,107.09. The recommendation of the Board of ~~Examiners in~~ Medicine and Surgery for the issuance of any temporary educational permits or any visiting faculty permits shall be made at regular meetings of such board, but the president or one other member of the ~~Board of Examiners in Medicine and Surgery board~~ and its executive secretary jointly shall have the power to recommend the issuance of such permits between the meetings of the board, which permits shall be subject to approval or disapproval at the next subsequent meeting of the ~~Board of Examiners in Medicine and Surgery board~~.

Sec. 88. Section 71-1,107.10, Reissue Revised Statutes of Nebraska, is amended to read:

71-1,107.10. (1) The recipient of a temporary educational permit shall pay an annual registration fee of fifteen dollars or any additional amount deemed necessary by the ~~Department of Health and Human Services Regulation and Licensure department~~ upon recommendation of the Board of ~~Examiners in~~ Medicine and Surgery to carry out ~~the provisions of~~ sections 71-1,107.01 to 71-1,107.14.

(2) The recipient of a visiting faculty permit shall pay an annual registration fee of twenty-five dollars or any additional amount deemed necessary by the ~~Department of Health and Human Services Regulation and Licensure department~~ upon recommendation of the Board of ~~Examiners in Medicine and Surgery board~~ in order to carry out ~~the terms and provisions of~~ sections 71-1,107.01 to 71-1,107.14.

Sec. 89. Section 71-1,107.11, Reissue Revised Statutes of Nebraska, is amended to read:

71-1,107.11. Any permit granted under the authority of sections 71-1,107.01 to 71-1,107.14 may be suspended, limited, or revoked by the ~~Department of Health and Human Services Regulation and Licensure department~~ upon recommendation of the Board of ~~Examiners in~~ Medicine and Surgery at any time upon a finding that the reasons for issuing such permit no longer exist or that the person to whom such permit has been issued is no longer qualified to hold such permit.

Sec. 90. Section 71-1,107.13, Reissue Revised Statutes of Nebraska, is amended to read:

71-1,107.13. A temporary educational permit may be issued to graduates of foreign schools or colleges of medicine or to individuals if the applicant, in addition to meeting the other requirements for the issuance of such permit, presents to the ~~Department of Health and Human Services Regulation and Licensure department~~ a copy of a permanent certificate of the Educational Commission on Foreign Medical Graduates currently effective and relating to such applicant or, in lieu thereof, such credentials as are necessary to certify to successful passage of the Visa Qualifying Examination, or its successor or equivalent examination, required by the United States Department of Health and Human Services and the United States Immigration and Naturalization Service or, if a graduate of a foreign medical school who has successfully completed a program of American medical training designated as the Fifth Pathway and who additionally has successfully passed the Educational Commission on Foreign Medical Graduates examination but has not yet received a permanent certificate attesting to the same, and provides such credentials as certify the same to the department, at such time as the department upon recommendation of the Board of ~~Examiners in~~ Medicine and Surgery determines, and, if so directed by the department, passes an examination prescribed by the department upon recommendation of the ~~Board of Examiners in Medicine and~~

~~Surgery board~~ to measure his or her clinical competence to proceed to advanced training before advancing beyond the initial phase of the training program, and if such examination is required, pays a fee of one hundred dollars or such additional amount as is determined by the department upon recommendation of the ~~Board of Examiners in Medicine and Surgery board~~ to cover the expense of such examination.

Sec. 91. Section 71-1,107.14, Reissue Revised Statutes of Nebraska, is amended to read:

71-1,107.14. A visiting faculty permit may be issued to graduates of foreign schools or colleges of medicine or to individuals if an accredited college or school of medicine in the State of Nebraska has requested that such permit be issued. It shall not be necessary for such applicant to provide a certificate of the Educational Commission on Foreign Medical Graduates as required in the case of temporary educational permits. If directed by the ~~Department of Health and Human Services Regulation and Licensure department~~ an applicant for a visiting faculty permit may be required to pass an examination prescribed by the ~~Department of Health and Human Services Regulation and Licensure department~~ upon recommendation of the Board of ~~Examiners in Medicine and Surgery~~ to measure his or her clinical competence to practice medicine and if such examination is required the applicant shall pay a fee of one hundred dollars or such additional amount as shall be determined by the ~~Department of Health and Human Services Regulation and Licensure department~~ upon recommendation of the ~~Board of Examiners in Medicine and Surgery board~~ to cover expense of such examination.

Sec. 92. Section 71-1,107.16, Reissue Revised Statutes of Nebraska, is amended to read:

71-1,107.16. For purposes of sections 71-1,107.15 to 71-1,107.30, unless the context otherwise requires:

(1) Approved program shall mean a program for the education of physician assistants which the board formally approves;

(2) Board shall mean the Board of ~~Examiners in Medicine and Surgery~~;

(3) Department shall mean the Department of Health and Human Services Regulation and Licensure;

(4) Physician assistant shall mean any person who graduates from a program approved by the Commission on Accreditation of Allied Health Education Programs or its successor agency and the board, who satisfactorily completes a proficiency examination, and whom the board, with the concurrence of the department, approves to perform medical services under the supervision of a physician or group of physicians approved by the board to supervise such assistant;

(5) Supervision shall mean the ready availability of the supervising physician for consultation and direction of the activities of the physician assistant. Contact with the supervising physician by telecommunication shall be sufficient to show ready availability if the board finds that such contact is sufficient to provide quality medical care. The level of supervision may vary by geographic location as provided in section 71-1,107.17;

(6) Trainee shall mean any person who is currently enrolled in an approved program;

(7) Proficiency examination shall mean the initial proficiency examination approved by the board for the licensure of physician assistants, including, but not limited to, the examination administered by the National Commission on Certification of Physician Assistants or other national organization established for such purpose that is recognized by the board;

(8) Supervising physician shall mean a (a) board-approved physician who utilizes an approved physician assistant or (b) backup physician;

(9) Backup physician shall mean a physician designated by the supervising physician to ensure supervision of the physician assistant in the supervising physician's absence. A backup physician shall be subject to the same requirements imposed upon the supervising physician when the backup physician is acting as a supervising physician; and

(10) Committee shall mean the Physician Assistant Committee created in section 71-1,107.25.

Sec. 93. Section 71-1,107.25, Reissue Revised Statutes of Nebraska, is amended to read:

71-1,107.25. There is hereby created the Physician Assistant Committee which shall review and make recommendations to the board regarding all matters relating to physician assistants that come before the board. Such matters shall include, but not be limited to, (1) applications for licensure, (2) physician assistant education, (3) scope of practice, (4) proceedings arising pursuant to section 71-1,107.23, (5) physician assistant licensure and supervising physician requirements, and (6) continuing medical education. The committee shall be directly responsible to the board. The committee shall be

appointed ~~within sixty days of April 16, 1985,~~ by the State Board of Health and shall be composed of two physician assistants, one supervising physician, one member of the ~~board~~ Board of Medicine and Surgery, and one ~~layperson~~ public member. The chairperson of the committee shall be elected by a majority vote of the committee members. All appointments shall be for four-year terms, at staggered intervals. Members shall serve no more than two consecutive terms. Reappointments shall be made by the State Board of Health. The committee shall meet on a regular basis and committee members shall receive reimbursement for time and travel expenditures on the same basis as provided in sections 81-1174 to 81-1177.

Sec. 94. Section 71-1,107.30, Reissue Revised Statutes of Nebraska, as amended by section 4, Legislative Bill 379, Ninety-sixth Legislature, First Session, 1999, is amended to read:

71-1,107.30. A physician assistant may prescribe ~~medications~~ drugs and devices as delegated to do so by a supervising physician. A supervising physician may delegate to a physician assistant the authority to prescribe all ~~medications~~ drugs and devices, except that Schedule II controlled substances may only be prescribed for a seventy-two-hour period for the relief of pain and such prescription shall not be renewable by the physician assistant. All prescriptions and prescription container labels shall bear the name of the supervising physician and the physician assistant. A physician assistant to whom has been delegated the authority to prescribe ~~medications~~ controlled substances shall obtain a register with the federal Drug Enforcement Administration registration number. When prescribing Schedule II controlled substances, the prescription container label shall bear all information required by the federal Controlled Substances Act of 1970.

Sec. 95. Section 71-1,135, Revised Statutes Supplement, 1998, 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 ~~Examiners in~~ Optometry. After August 25, 1989, 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. 96. Section 71-1,135.02, Revised Statutes Supplement, 1998, is amended to read:

71-1,135.02. (1) No 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 ~~Examiners in~~ Optometry to use topical ocular pharmaceutical agents for diagnostic purposes prior to April 30, 1987, shall use topical ocular pharmaceutical agents for diagnostic purposes authorized under subdivision (2) of section 71-1,133 unless such person (a) submits to the ~~Board of Examiners in Optometry~~ board the fee of not less than twenty dollars nor more than one hundred dollars as determined by the department upon the recommendation of the board, together with evidence of 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, (b) passes an examination approved by the department, and (c) has been certified by the department upon the recommendation of the ~~Board of Examiners in Optometry~~ board as qualified to use topical ocular pharmaceutical agents for diagnostic purposes. The department may approve for certification pursuant to subdivision (1)(a) 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.

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

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

(B) 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) No optometrist licensed in this state on or after April 30, 1987, shall use topical ocular pharmaceutical agents for therapeutic purposes authorized under subdivision (3) of section 71-1,133 unless such person (a) submits to the ~~Board of Examiners in Optometry board~~ the fee of not less than twenty dollars nor more than one hundred dollars as determined by the department upon the recommendation of the board, together with evidence of 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 the examination, diagnosis, and treatment of the eye, ocular adnexa, and visual system offered by a school or college approved by the department, (b) passes an examination approved by the department, (c) has been certified by the department upon the recommendation of the ~~Board of Examiners in Optometry board~~ to use topical ocular pharmaceutical agents for therapeutic purposes, and (d) has been certified by the department upon the recommendation of the ~~Board of Examiners in Optometry board~~ to use topical ocular pharmaceutical agents for diagnostic purposes. The department may approve for certification pursuant to subdivision (2)(a) 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 of Examiners in Optometry 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 of Examiners in Optometry 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.

Sec. 97. Section 71-1,135.03, Revised Statutes Supplement, 1998, is amended to read:

71-1,135.03. (1) No course or courses in pharmacology shall be approved by the department upon the recommendation of the ~~Board of Examiners in Optometry~~ unless taught by an institution which is accredited by a regional or professional accrediting organization which is recognized by the United States Department of Education and the transcript credit for the course or courses is certified to the board by the institution.

(2) No course of instruction in the treatment of glaucoma shall be approved by the department upon the recommendation of the ~~Board of Examiners in Optometry board~~ unless it is taught by an institution that is recognized by the United States Department of Education or its successor and the content for the course is certified to the board by the institution as being comparable in content to a course of instruction in the treatment of glaucoma required by

other ~~licensing~~ professional boards for licensees or registrants allowed to treat glaucoma in the scope of their professional practice.

Sec. 98. Section 71-1,135.04, Revised Statutes Supplement, 1998, is amended to read:

71-1,135.04. In issuing a license or renewal, the Board of ~~Examiners in~~ 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 therapeutic use of such agents as provided in subdivision (2) or (3) of section 71-1,133.

Sec. 99. Section 71-1,136.01, Revised Statutes Supplement, 1998, is amended to read:

71-1,136.01. Each Nebraska-licensed optometrist in active practice within the State of Nebraska shall be required on or before August 1 of each even-numbered year, ~~commencing in 1986,~~ to attend thirty-two hours biennially, of which sixteen hours shall be earned annually, ~~each year commencing August 1, 1990,~~ of such approved scientific schools, clinics, forums, lectures, or optometric educational seminars, as may be announced and approved by the Board of ~~Examiners in~~ Optometry, as a prerequisite for the licensee's next subsequent license renewal if at least sixteen hours of such educational program are conducted annually in the State of Nebraska and at least thirty-two hours of such educational program are conducted biennially in the State of Nebraska.

Each licensed optometrist in active practice within the State of Nebraska shall, on or before August 1 of each even-numbered year, certify on forms provided by the Board of ~~Examiners in Optometry~~ board that he or she has complied with sections 71-1,133 to 71-1,136 and this section during the preceding two-year period. Such board of ~~examiners~~ shall, on or before August 1 of each even-numbered year, report all licensees who have complied with the educational requirements to the ~~Department of Health and Human Services Regulation and Licensure~~ department. Licensees who have not complied with such requirements shall not be issued a renewal license unless exempt or excused for good cause shown. The department, on the recommendation of the Board of ~~Examiners in Optometry~~ board, may waive continuing education requirements, in part or in total, for any two-year licensing period when a licensee submits documentation that circumstances beyond his or her control prevented completion of such requirements. Such circumstances shall include situations in which:

(1) The licensee holds a Nebraska license but is not practicing optometry in Nebraska;

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

(3) 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

(4) The licensee was first licensed within the twenty-four months immediately preceding the renewal date provided in section 71-110.

The department, with the consent of the Board of ~~Examiners in Optometry~~ board, may adopt and promulgate rules and regulations not inconsistent with this section pertaining to waiver of continuing education requirements.

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.

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 the continuing education seminars listed on his or her renewal application.

Sec. 100. Section 71-1,136.02, Reissue Revised Statutes of Nebraska, is amended to read:

71-1,136.02. Funds allocated to the Board of ~~Examiners in~~ Optometry may be expended by the board in the administration and enforcement of the laws, rules, and regulations pertaining to optometry and for educational and

other purposes directly related to the practice of optometry within Nebraska.

Sec. 101. Section 71-1,136.03, Reissue Revised Statutes of Nebraska, is amended to read:

71-1,136.03. The Board of ~~Examiners in Optometry~~, with the approval of the ~~Department of Health and Human Services Regulation and Licensure department~~, may adopt and promulgate such rules and regulations as may be reasonable and proper for the purpose of administering such provisions of sections 71-1,133 to 71-1,136.09 as properly fall within the jurisdiction of the board.

Sec. 102. Section 71-1,136.09, Reissue Revised Statutes of Nebraska, is amended to read:

71-1,136.09. The Board of ~~Examiners in Optometry~~ shall provide the Attorney General with copies of all complaints it receives which allege or may involve possible statutory violations by the licensee. The Attorney General shall then determine the appropriate legal action to take, if any, against the licensee.

Sec. 103. Section 71-1,137, Reissue Revised Statutes of Nebraska, is amended to read:

71-1,137. For the purpose of the Uniform Licensing Law, the following classes of persons shall be deemed to be engaged in practice as osteopathic physicians: (1) Persons publicly professing to be osteopathic physicians or publicly professing to assume the duties incident to the practice of osteopathic physicians; and (2) persons who are graduates of a school or college of osteopathic medicine and who treat human ailments by that system of the healing art which was advocated and taught by the school or college of osteopathic medicine from which such person graduated at the time of his or her graduation as determined by the ~~Department of Health and Human Services Regulation and Licensure department~~ after consultation with the Board of ~~Examiners in Medicine and Surgery~~. No license issued under this section shall authorize the person so licensed to perform surgical procedures except those usually performed by general practitioners, as determined by the ~~Department of Health and Human Services Regulation and Licensure department~~ upon consultation with the ~~Board of Examiners in Medicine and Surgery board~~. Nothing in this section shall be construed to prohibit an osteopathic physician licensed in accordance with this section from serving as an assistant in surgery more complex than that usually performed by general practitioners, as determined above, when such surgery is performed by an osteopathic physician licensed pursuant to section 71-1,139.01 or by an osteopathic physician or doctor of medicine licensed pursuant to section 71-1,104. In no event shall this section or section 71-1,139.01 be construed as authorizing any physician to engage in any procedure which he or she is not qualified by training to perform according to the standards prevailing in the State of Nebraska at the time.

Persons who are licensed to practice as osteopathic physicians who have demonstrated to the ~~Board of Examiners in Medicine and Surgery board~~ that they have acquired adequate training and knowledge for such purpose and have been so authorized by such board may prescribe and administer drugs and medicines. The ~~Board of Examiners in Medicine and Surgery board~~ shall provide procedures for determining an osteopathic physician's qualifications to prescribe and administer drugs and medicines and for issuing appropriate evidence of authority to do so.

Sec. 104. Section 71-1,139, Revised Statutes Supplement, 1998, is amended to read:

71-1,139. Every applicant for a license to practice as an osteopathic physician shall (1) present proof of having completed a four-year course in an accredited high school or its equivalent, (2) present proof of having graduated from an accredited school or college of osteopathic medicine, and (3) pass an examination, as prescribed by the Board of ~~Examiners in Medicine and Surgery~~, in the science of osteopathy and the practice of the same. The application for a license to practice as an osteopathic physician shall include the applicant's social security number.

The ~~Department of Health and Human Services Regulation and Licensure department~~ shall accept, in lieu of the examination provided in subdivision (3) of this section, a certificate of examination issued by the National Board of Osteopathic Examiners of the United States of America. Every applicant for a license upon the basis of such certificate shall be required to pay the fees prescribed for licenses issued to osteopathic physicians without examination, based upon a license by examination held in another state or territory or the District of Columbia.

Sec. 105. Section 71-1,139.01, Reissue Revised Statutes of Nebraska, is amended to read:

71-1,139.01. Any person (1) who has graduated from an accredited

school or college of osteopathic medicine since January 1, 1963, (2) who meets all statutory requirements for licensure as an osteopathic physician, (3) who has served one year of internship or its equivalent at an institution approved for such training by the Board of ~~Examiners in~~ Medicine and Surgery, and (4) who, after his or her internship, has taken and passed the examination provided in section 71-1,104, upon making application therefor shall receive a license as a Doctor of Osteopathic Medicine and Surgery which shall qualify such person to practice osteopathic medicine and surgery.

The ~~Department of Health and Human Services Regulation and Licensure department~~ shall accept, in lieu of the examination provided in subdivision (4) of this section, a certificate of examination issued by the National Board of Osteopathic Examiners of the United States of America. Every applicant for a license upon the basis of such certificate shall be required to pay the fees prescribed for licenses issued in osteopathic medicine and surgery without examination, based upon a license by examination held in another state or territory or the District of Columbia.

With respect to persons who have graduated from an accredited school or college of osteopathic medicine prior to January 1, 1963, the ~~Department of Health and Human Services Regulation and Licensure department~~, upon the approval of the Board of ~~Examiners in~~ Medicine and Surgery, may issue a license to practice osteopathic medicine and surgery to any such graduate who meets all the requirements for issuance of such license except graduation from an accredited school or college of osteopathic medicine after January 1, 1963, and whose application has been approved by the ~~Board of Examiners in Medicine and Surgery board~~.

Sec. 106. Section 71-1,140, Reissue Revised Statutes of Nebraska, is amended to read:

71-1,140. An accredited school or college of osteopathic medicine shall be one approved by the ~~Department of Health and Human Services Regulation and Licensure department~~ upon the recommendation of the Board of ~~Examiners in~~ Medicine and Surgery. An accredited school or college of osteopathic medicine shall meet and maintain general minimum standards prescribed by the ~~Board of Examiners in Medicine and Surgery board~~. The minimum standards shall apply equally to all such accredited schools and colleges. Any school or college seeking accreditation shall permit inspections by the department.

Nothing in this section shall be construed to prohibit the ~~Department of Health and Human Services Regulation and Licensure department~~, upon consultation with the ~~Board of Examiners in Medicine and Surgery board~~, from accepting accreditation of a school or college of osteopathic medicine by the American Osteopathic Association as evidence of meeting the specified requirements of this section or the equivalent thereof.

Sec. 107. Section 71-1,142, Revised Statutes Supplement, 1998, is amended to read:

71-1,142. For purposes of sections 71-1,142 to 71-1,147.61 and elsewhere in the Uniform Licensing Law, unless the context otherwise requires:

(1) Practice of pharmacy shall mean (a) the interpretation and evaluation of prescription orders, (b) the compounding, dispensing, and labeling of drugs and devices, except labeling by a manufacturer, packer, or distributor of nonprescription drugs and commercially packaged legend drugs and devices, (c) the participation in drug selection, drug utilization review, drug source selection, and drug administration, (d) the proper and safe storage of drugs and devices and the maintenance of proper records therefor, (e) patient counseling, (f) the provision of pharmaceutical care, and (g) the offering or performing of those acts, services, operations, or transactions necessary in the conduct, operation, management, and control of pharmacy. The active practice of pharmacy shall mean the performance of the functions set out in this subdivision by a pharmacist as his or her principal or ordinary occupation;

(2) Administration shall mean the direct application of a drug or device by injection, inhalation, ingestion, or other means to the body of a patient;

(3) ~~Board of pharmacy or board~~ shall mean the Board of ~~Examiners in~~ Pharmacy;

(4) Caregiver shall mean any person acting as an agent on behalf of a patient or any person aiding and assisting a patient;

(5) Compounding shall mean the preparation, mixing, or assembling of a drug or device (a) as the result of a practitioner's prescription order or initiative occurring in the course of professional practice based upon the relationship between the practitioner, patient, and pharmacist or (b) for the purpose of, or incident to, research, teaching, or chemical analysis and not for sale or dispensing. Compounding shall include the preparation of drugs or

devices in anticipation of prescription orders based upon routine, regularly observed prescribing patterns;

(6) Deliver or delivery shall mean the actual, constructive, or attempted transfer of a drug or device from one person to another, whether or not for consideration;

(7) Department shall mean the Department of Health and Human Services Regulation and Licensure;

(8) Device shall mean 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 medical practitioner and dispensed by a pharmacist or other person authorized by law to do so;

(9) Dialysis drug or device distributor shall mean 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, upon the order of a medical practitioner;

(10) Dialysis drug or device distributor worker shall mean a person working for a dialysis drug or device distributor operating with a drug dispensing permit who has completed the approved training and has demonstrated proficiency to perform the task or tasks of assembling, labeling, or delivering a patient order;

(11) Dispense or dispensing shall mean the preparation and delivery of a drug or device pursuant to a lawful order of a medical practitioner in a suitable container appropriately labeled for subsequent administration to or use by a patient or other individual entitled to receive the drug or device;

(12) Distribute shall mean the delivery of a drug or device other than by administering or dispensing;

(13) Drug dispensing permit shall mean a permit issued by the department upon the recommendation of the board to a public health clinic or a dialysis drug or device distributor which allows for the dispensing of drugs and devices in the formulary approved pursuant to section 71-1,147.48;

(14) Person shall mean an individual, corporation, partnership, limited liability company, association, or other legal entity;

(15) Labeling shall mean 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;

(16) Pharmaceutical care shall mean the provision of drug therapy for the purpose of achieving therapeutic outcomes that improve a patient's quality of life. Such outcomes shall 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 shall include 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;

(17) Pharmacist shall mean any person who (a) is licensed by the State of Nebraska to practice pharmacy or (b) is primarily responsible for providing pharmaceutical care as defined in subdivision (16) of this section;

(18) Pharmacy shall mean (a) any establishment, place, or location advertised as a pharmacy, drug store, hospital pharmacy, dispensary, apothecary, or any combination of such titles or any establishment where the practice of pharmacy is carried on except as exempted in section 71-1,143 and (b) any establishment, place, or location used as a pick-up point or drop point, including kiosks, for prescriptions to be filled or where prescribed drugs or devices are made ready for delivery to the patient, but shall not include an emergency box located within an institution pursuant to the provisions of the Emergency Box Drug Act;

(19) Drugs, medicines, and medicinal substances shall mean (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 as defined in subdivision (24) of this section;

(20) Medical practitioner shall mean any licensed physician,

surgeon, podiatrist, dentist, or other person licensed to write prescriptions intended for treatment or prevention of disease or to affect body function in humans or animals;

(21) Patient counseling shall mean the verbal communication by a pharmacist, 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 prescribed drugs and devices and shall also include the duties set out in subsection (2) of section 71-1,147.35;

(22) Pharmacist in charge shall mean a pharmacist licensed by the State of Nebraska to practice pharmacy who has been designated on a pharmacy permit or designated by a public or private hospital licensed by the department as being responsible for the practice of pharmacy in the pharmacy for which such permit is issued or such hospital's inpatient pharmacy and who shall work 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;

(23) Pharmacy intern shall mean (a) a student currently enrolled in an accredited college or school of pharmacy or (b) a graduate of an accredited college or school of pharmacy serving his or her internship, such internship to expire not later than fifteen months after the date of graduation or at the time of professional licensure, whichever comes first. Such pharmacy intern may compound and dispense drugs or devices and fill prescriptions only in the presence of and under the immediate personal supervision of a licensed pharmacist. Such licensed pharmacist shall either be (i) the person to whom the pharmacy permit is issued or a person in the actual employ of the permittee or (ii) the pharmacist in charge designated by a public or private institution licensed as a hospital by the department which is not required to obtain a permit pursuant to section 71-1,147.01 or a person in the actual employ of such institution;

(24) Prescription drug or legend drug shall mean (a) a drug which under federal law is required, prior to being dispensed or delivered, to be labeled with either of the following statements: (i) Caution: Federal law prohibits dispensing without prescription; or (ii) Caution: Federal law restricts this drug to use by or on the order of a licensed veterinarian or (b) a drug which is required by any applicable federal or state law or regulation to be dispensed on prescription only or is restricted to use by medical practitioners only;

(25) Prescription order or prescription shall mean a lawful written or verbal order of a medical practitioner for a drug or device but shall not include an order for a drug or device which is dispensed for administration to a patient during the patient's stay in a hospital;

(26) Nonprescription drugs shall mean nonnarcotic medicines or drugs which may be sold without a prescription 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;

(27) Public health clinic worker shall mean a person in a public health clinic operating with a drug dispensing permit who has completed the approved training and has demonstrated proficiency to perform the task of dispensing authorized refills of oral contraceptives;

(28) Public health clinic shall mean 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 71-2017.01;

(29) Supervision shall mean the immediate personal guidance and direction by the licensed pharmacist on duty in the facility of the performance by supportive pharmacy personnel of authorized activities or functions subject to verification by such pharmacist, except that when supportive pharmacy personnel perform 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 patients or residents of a health care facility licensed pursuant to sections 71-2017 to 71-2029, the activities or functions of such supportive pharmacy personnel shall only be subject to verification by a pharmacist on duty in the facility;

(30) Supportive pharmacy personnel shall mean individuals at least eighteen years of age who are high school graduates or officially recognized by the State Department of Education as possessing the equivalent degree of education, who have never been convicted of any drug-related misdemeanor or felony, and who, under the written control procedures and guidelines of an employing pharmacy and who have received onsite training pursuant to subsection (4) of section 71-1,147.33, may perform those functions which do

not require the exercise of professional judgment in assisting a pharmacist in connection with the preparation, compounding, dispensing, and distribution of drugs or devices under the supervision of a licensed pharmacist on duty in the facility, when such functions are subject to verification. The ratio of supportive pharmacy personnel allowed to assist one pharmacist in the preparation, compounding, dispensing, and distribution of drugs or devices shall not exceed one-to-one, except that a two-to-one ratio may apply to supportive pharmacy personnel assisting a pharmacist in circumstances when the prescribed drugs or devices will be administered by a licensed staff member or consultant or by a licensed physician assistant to patients of a hospital licensed pursuant to sections 71-2017 to 71-2029. Under no circumstances shall the ratio exceed two supportive pharmacy personnel to one supervising pharmacist;

(31) Verification shall mean the confirmation by the supervising pharmacist of the accuracy and completeness of the acts, tasks, or functions undertaken by supportive pharmacy personnel to assist the pharmacist in the practice of pharmacy. Verification by the supervising pharmacist shall be documented prior to the time when the drug or device is dispensed; and

(32) Written control procedures and guidelines shall mean the document prepared by an employing pharmacy and approved by the board which specifies the manner in which the qualifications of supportive pharmacy personnel employed by the pharmacy are determined, the manner in which the training of such personnel is conducted and their basic level of competency is confirmed, the manner in which supervision is provided, the manner in which the functions of supportive pharmacy personnel are verified, and a protocol governing the use of supportive pharmacy personnel and the functions which they may perform.

Sec. 108. Section 71-1,144.01, Reissue Revised Statutes of Nebraska, is amended to read:

71-1,144.01. (1) Commencing in 1984, standards for relicensure for each pharmacist within the State of Nebraska shall require that such pharmacist biennially complete thirty hours of continuing education, as prescribed in sections 71-1,144.01 to 71-1,144.05.

(2) As used in sections 71-1,144.01 to 71-1,144.05, unless the context otherwise requires:

(a) Continuing education shall mean study in one or more of the general areas of socioeconomic, administrative, managerial, and legal aspects of health care; the properties and actions of drugs and dosage forms; etiology; characteristics and therapeutics of the disease state; and related topics appropriate to the pharmacist in his or her role which are offered by an approved provider but not part of a formal degree program. The activity shall be a planned learning experience designed to promote the continual development of knowledge, skills, and attitudes on the part of the practitioner;

(b) Approved provider shall mean an institution or organization meeting the same quality standards as those established in the Criteria for Quality of the American Council on Pharmaceutical Education;

(c) Continuing education unit shall mean ten contact hours of participation in an organized continuing education experience, under responsible sponsorship, capable direction, and qualified instruction as defined by the American Council on Pharmaceutical Education;

(d) Board shall mean the Board of ~~Examiners in~~ Pharmacy;

(e) Department shall mean the Department of Health and Human Services Regulation and Licensure; and

(f) Committee shall mean the Committee on Continuing Pharmacy Education.

Sec. 109. Section 71-1,144.04, Reissue Revised Statutes of Nebraska, is amended to read:

71-1,144.04. (1) Each pharmacist shall provide a listing of continuing education activities participated in 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 pharmacist shall be responsible for maintaining in his or her personal files such certificates or records of credit from continuing education activities ~~programs~~ received from approved providers.

The board shall biennially select, in a random manner, a representative sample of the license renewal applications for audit of continuing education credits. The names, addresses, and a copy of the section of the application form which lists continuing education credits shall be forwarded to the committee which shall cause the pharmacist to submit certificates or other records of attendance which were received from the

approved provider for review by the committee.

(2) The department, on the recommendation of the ~~Board of Examiners in Pharmacy~~ board, may waive continuing education requirements, in part or in total, for any two-year licensing period 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 does not reside or practice pharmacy in Nebraska;

(b) The licensee has served in the regular armed forces of the United States during 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 preceding the license renewal date;

(d) The licensee has been initially licensed by the board within the twenty-four months immediately preceding the license renewal date; and

(e) The licensee has successfully completed two or more semester hours of formal credit instruction biennially offered by an accredited school or college of pharmacy which contributes to meeting the requirements of an advanced degree in pharmacy.

The department, with the consent of the ~~Board of Examiners in Pharmacy~~ board, may adopt and promulgate rules and regulations not inconsistent with this section pertaining to waiver of continuing education requirements.

Sec. 110. Section 71-1,145, Reissue Revised Statutes of Nebraska, is amended to read:

71-1,145. (1) Every applicant for examination and registration as a pharmacist shall be not less than twenty-one years of age, of good moral character and temperate habits, a graduate of an accredited school or college of pharmacy, or an accredited department of pharmacy of a university, recognized by the ~~Board of Examiners in Pharmacy~~ board, except that an applicant who is a graduate of a school, college, or university department of pharmacy located outside of the United States and which is not accredited, shall be deemed to have satisfied the requirement of being a graduate of an accredited school, college, or department of pharmacy upon providing evidence satisfactory to the ~~Board of Examiners in Pharmacy~~ board, of graduation from such foreign school, college, or department of pharmacy and upon successfully passing an equivalency examination approved by the ~~Board of Examiners in Pharmacy~~ board.

(2) Every applicant shall file proof of sufficient internship experience in a community retail or hospital pharmacy, under the supervision of a registered or licensed pharmacist, as may be required by the ~~Board of Examiners in Pharmacy~~ board, which shall comply with national requirements for internship as set forth by the National Association of Boards of Pharmacy; shall have satisfactorily completed at least five years of college of which at least three years shall have been in an accredited school or college of pharmacy, or in an accredited department of pharmacy of a university; and shall pass an examination satisfactory to the ~~Board of Examiners in Pharmacy~~ board.

(3) Proof of the qualifications for registration prescribed in this section shall be made to the satisfaction of the ~~Board of Examiners in Pharmacy~~ board, substantiated by proper affidavits, except that in all cases the actual time of attendance at an accredited school or college of pharmacy, or an accredited department of pharmacy of a university, is certified by the appropriate school, college, or university authority by the issuance of the degree granted to a graduate of such school, college, or department of pharmacy. Service and experience in a retail or hospital pharmacy under the supervision of a registered pharmacist, as required in this section, shall be predominantly related to the practice of pharmacy, and shall include the keeping of records and the making of reports required under state and federal statutes. The Department of Health and Human Services Regulation and Licensure, upon the recommendation of the ~~Board of Examiners in Pharmacy~~ board, shall adopt and promulgate rules and regulations as may be required to establish standards for internship which shall comply with national requirements to effect reciprocity with other states which have similar requirements for licensure. The fee for pharmacy internship shall be forty dollars and shall accompany the application and shall be transmitted to the State Treasurer for deposit in the Nebraska Pharmaceutical Fund for expenditure in the manner prescribed by section 71-1,147.02.

Sec. 111. Section 71-1,146, Reissue Revised Statutes of Nebraska, is amended to read:

71-1,146. An accredited school or college of pharmacy, or an accredited department of pharmacy of a university, shall be one approved by the ~~Board of Examiners in Pharmacy~~ board upon the recommendation of the accrediting committee of the American Council on Pharmaceutical Education. It shall be a school or college of pharmacy, or a department of pharmacy of a university, which maintains at least a three-year course in pharmacy, consisting of not less than thirty-two weeks of instruction each school year. Such school or college of pharmacy or department of pharmacy of a university shall require as a condition to enrollment therein two full years of college or university credit. The combined course shall consist of five years of college or university credit each year of which shall consist of not less than thirty-two weeks of instruction.

Sec. 112. Section 71-1,147.02, Reissue Revised Statutes of Nebraska, is amended to read:

71-1,147.02. Each application for or renewal of a permit to conduct a pharmacy shall be made on a form prescribed by the ~~Board of Examiners in Pharmacy~~ board and furnished by the ~~Department of Health and Human Services Regulation and Licensure~~ department. Such permit shall be ~~displayed in a conspicuous place kept available~~ in the pharmacy for which it is issued, ~~shall be shown upon request~~, and shall expire on June 30 following the date of issuance. The department shall, on or before the tenth day of each month, remit to the State Treasurer all fees and money collected in connection, directly or indirectly, with the issuance of or renewal of a permit, to conduct a pharmacy. Such fees and money shall be credited by the State Treasurer to the Nebraska Pharmaceutical Fund, which fund is hereby created. The fund shall be used exclusively for the administration of the laws, rules, and regulations pertaining to pharmacies, the practice of pharmacy, and the Wholesale Drug Distributor Licensing Act. Any money in the Nebraska Pharmaceutical Fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

Sec. 113. Section 71-1,147.10, Reissue Revised Statutes of Nebraska, is amended to read:

71-1,147.10. (1) The department shall deny an application for a permit to conduct a pharmacy, revoke or suspend a permit to conduct a pharmacy, refuse renewal of a permit to conduct a pharmacy, deny an application for a license to operate a hospital, revoke or suspend the license of a hospital, or refuse renewal of a hospital license on any of the following grounds:

- (a) Conviction of any crime involving moral turpitude;
- (b) Obtaining a pharmacy permit or an inspection certificate by false representation or fraud;
- (c) Operating a pharmacy or hospital pharmacy without a licensed pharmacist responsible for the practice of pharmacy;
- (d) The compounding and dispensing of drugs or devices or the filling of a prescription by a person other than a licensed pharmacist or by an intern in pharmacy, without the presence of and the immediate personal supervision of a licensed pharmacist except as provided in sections 71-1,147.33 and 71-1,147.53;
- (e) A conviction of a violation of sections 71-1,142 to 71-1,147.61 or of a felony or, if a natural person, the revocation or suspension of a license to practice pharmacy in this state;
- (f) Unprofessional conduct which shall include, but not be limited to:
 - (i) Misrepresentation or fraud in the conduct of a pharmacy or hospital pharmacy;
 - (ii) Aiding or abetting an unlicensed person to practice pharmacy;
 - (iii) The dispensing over the counter without a prescription of a drug or device which under state or federal law or regulation is prohibited from being dispensed without a prescription or the renewal of such a prescription without the authorization of the prescriber;
 - (iv) The dispensing of a different drug or device in place of the drug or device ordered or prescribed without the express permission of the person ordering or prescribing the same;
 - (v) Any fraudulent act in drug product selection whereby the purchaser is charged for the prescribed brand rather than the selected product which is deemed to be chemically and therapeutically equivalent;
 - (vi) Failure to account for significant, substantial shortages or overages of controlled substances; or
 - (vii) Use of supportive pharmacy personnel in violation of section 71-1,147.33;
- (g) Violation of the rules and regulations governing the practice of

pharmacy as adopted and promulgated under authority of section 71-1,147.09 by the department; and

(h) Suggesting, soliciting, ordering, assisting, or abetting a pharmacist in the commission of any of the offenses set forth in sections 71-147 and 71-148.

(2) Nothing contained in this section shall be construed to prohibit any hospital licensed by the department from establishing rules and regulations regarding the method by which medical staff members shall agree to order or prescribe drugs or devices for patients of such hospitals.

(3) If the department determines to deny, revoke, suspend, or refuse renewal of the license of a hospital pursuant to this section, the procedures for such action in sections 71-2023 to 71-2029 shall be followed.

(4) If the department determines to deny an application for a permit to or to revoke, suspend, or refuse renewal of a permit to conduct a pharmacy, it shall send to the applicant or permittee, by certified mail, a notice setting forth the particular reasons for the determination. The denial, suspension, revocation, or refusal of renewal shall become final thirty days after the mailing of the notice unless the applicant or permittee, within such thirty-day period, requests a hearing in writing. The applicant or permittee shall be given a fair hearing before the department and may present such evidence as may be proper. On the basis of such evidence the determination involved shall be affirmed or set aside, and a copy of such decision setting forth the finding of facts and the particular reasons upon which it is based shall be sent by certified mail to the applicant or permittee. The decision shall become final thirty days after a copy of such decision is mailed unless the applicant or permittee within such thirty-day period appeals the decision pursuant to section 71-1,147.12. The procedure governing hearings authorized by this section shall be in accordance with rules and regulations adopted and promulgated by the department. A full and complete record shall be kept of all proceedings. Witnesses may be subpoenaed by either party and shall be allowed a fee at a rate prescribed by the rules and regulations adopted and promulgated by the department.

(5) The proceeding shall be summary in its nature and triable as an equity action. Affidavits may be received in evidence in the discretion of the Director of Regulation and Licensure. The department shall have the power to administer oaths, to subpoena witnesses and compel their attendance, and to issue subpoenas duces tecum and require the production of books, accounts, and documents in the same manner and to the same extent as the district courts of the state. Depositions may be used by either party. Upon the completion of any hearing, the director shall have the authority through entry of an order to exercise in his or her discretion any or all of the following powers:

(a) Issue a censure ~~or reprimand~~ against the permittee;

(b) ~~Suspend judgment;~~

~~(c)~~ Place the permittee on probation;

(c) ~~(d)~~ Place a limitation or limitations on the permit and upon the right of the permittee to operate a pharmacy to the extent, scope, or type of operation for such time and under such conditions as the director finds necessary and proper. The director shall consult with the board in all instances prior to issuing an order of limitation;

(d) ~~(e)~~ Impose a civil penalty not to exceed ~~ten~~ twenty thousand dollars;

(e) ~~(f)~~ Enter an order of suspension of the permit;

(f) ~~(g)~~ Enter an order of revocation of the permit; and

(g) ~~(h)~~ Dismiss the action.

(6) The permittee shall not operate a pharmacy after a permit is revoked or during the time for which the permit is suspended. If a permit is suspended, the suspension shall be for a definite period of time to be fixed by the director. Such permit shall be automatically reinstated upon the expiration of such period if the current renewal fees have been paid. If such permit is revoked, such revocation shall be permanent, except that at any time after the expiration of two years, application may be made for reinstatement of any permittee whose permit shall have been revoked. Such application shall be addressed to the director but may not be received or filed by him or her unless accompanied by a written recommendation of reinstatement by the board. The amount of the civil penalty, if any, shall be based on the severity of the violation. If any violation is a repeated or continuing violation, each violation or each day a violation continues shall constitute a separate violation for the purpose of computing the applicable civil penalty, if any. The department may adopt and promulgate the necessary rules and regulations concerning notice and hearing of such application.

(7) Any civil penalty assessed and unpaid under this section shall constitute a debt to the State of Nebraska which may be collected in the

manner of a lien foreclosure or sued for and recovered in a proper form of action in the name of the state in the district court of the county in which the violator resides or owns property. The department shall within thirty days after receipt remit any collected civil penalty to the State Treasurer for credit to the permanent school fund.

(8) The Attorney General, upon the recommendation of the board, shall initiate criminal proceedings pursuant to section 71-167 against supportive pharmacy personnel or public health clinic workers who knowingly perform tasks or functions which require the expertise or professional judgment of a pharmacist. When appropriate, the Attorney General, upon the recommendation of the board, shall initiate corresponding criminal charges against pharmacists, pharmacy owners, or other persons who knowingly permit supportive pharmacy personnel or public health clinic workers to perform professional duties which require the expertise or professional judgment of a pharmacist.

Sec. 114. Section 71-1,147.11, Reissue Revised Statutes of Nebraska, is amended to read:

71-1,147.11. (1) A petition for the revocation or suspension of a permit of a pharmacy may be filed by the Attorney General or by the county attorney in the county in which the permittee resides or is conducting a pharmacy. The petition shall be filed with the ~~board~~ Board of Examiners in Pharmacy and shall be entitled In the Matter of the Revocation (or suspension) of the Permit of (Name of permittee) to operate a pharmacy. It shall state the charges against the permittee with reasonable definiteness. Upon approval of such petition by the ~~Board of Examiners in Pharmacy~~ board, it shall be forwarded to the ~~Department of Health and Human Services Regulation and Licensure~~ department which shall make an order fixing a time and place for hearing thereon, which shall not be less than ten days nor more than thirty days thereafter. Notice of the filing of such petition and of the time and place of hearing shall be served upon the permittee at least ten days before such hearing.

(2) The notice of charges, referred to in subsection (1) of this section, may be served by any sheriff or constable or by any person especially appointed by the ~~Department of Health and Human Services Regulation and Licensure~~ department. The order of revocation or suspension of a permit shall be entered on record and the name of such permittee stricken from the roster of permittees, and the permittee may not engage in the operation of a pharmacy after revocation of the permit or during the time for which it is suspended.

Sec. 115. Section 71-1,147.18, Reissue Revised Statutes of Nebraska, is amended to read:

71-1,147.18. Temporary educational permit shall mean a permit to practice pharmacy in a supervised educational program approved by the ~~Board of Examiners in Pharmacy~~ board.

Sec. 116. Section 71-1,147.19, Reissue Revised Statutes of Nebraska, is amended to read:

71-1,147.19. Graduate pharmacy education or approved program shall mean a period of supervised educational training by a graduate of an accredited school or college of pharmacy, which training has been approved by the ~~Department of Health and Human Services Regulation and Licensure~~ department upon recommendation of the ~~Board of Examiners in Pharmacy~~ board.

Sec. 117. Section 71-1,147.20, Reissue Revised Statutes of Nebraska, is amended to read:

71-1,147.20. Accredited hospital or clinic shall mean a hospital or clinic accredited by the ~~Department of Health and Human Services Regulation and Licensure~~ department upon recommendation of the ~~Board of Examiners in Pharmacy~~ board.

Sec. 118. Section 71-1,147.21, Reissue Revised Statutes of Nebraska, is amended to read:

71-1,147.21. Accredited school or college of pharmacy shall mean a school or college of pharmacy or a department of pharmacy of a university approved by the ~~Board of Examiners in Pharmacy~~ board pursuant to the provisions of section 71-1,146.

Sec. 119. Section 71-1,147.22, Reissue Revised Statutes of Nebraska, is amended to read:

71-1,147.22. The ~~Department of Health and Human Services Regulation and Licensure~~ department, upon the recommendation of the ~~Board of Examiners in Pharmacy~~ board, shall have authority to issue temporary educational permits to qualified applicants in accordance with the provisions of sections 71-1,147.17 to 71-1,147.32.

Sec. 120. Section 71-1,147.24, Reissue Revised Statutes of Nebraska, is amended to read:

71-1,147.24. Before any temporary educational permit is issued

pursuant to sections 71-1,147.17 to 71-1,147.32, the ~~Department of Health and Human Services Regulation and Licensure department~~, upon recommendation of the ~~Board of Examiners in Pharmacy board~~, shall determine that the applicant for such permit is of good moral character and that such applicant has otherwise met all of the requirements of sections 71-1,147.17 to 71-1,147.32 relating to issuing any such permit.

Sec. 121. Section 71-1,147.25, Reissue Revised Statutes of Nebraska, is amended to read:

71-1,147.25. Except as otherwise provided by law, the holder of any temporary educational permit shall be subject to all of the rules and regulations prescribed for pharmacists regularly licensed in the State of Nebraska and such other rules and regulations as may be adopted by the ~~Department of Health and Human Services Regulation and Licensure department~~, upon the recommendation of the ~~Board of Examiners in Pharmacy board~~, with respect to such permits in order to carry out the purposes of sections 71-1,147.17 to 71-1,147.32.

Sec. 122. Section 71-1,147.29, Reissue Revised Statutes of Nebraska, is amended to read:

71-1,147.29. The recommendation of the ~~Board of Examiners in Pharmacy board~~ for the issuance of any temporary educational permits shall be made at regular meetings of ~~such the board~~, but the ~~chairman chairperson~~ or one other member of the ~~Board of Examiners in Pharmacy board~~, as specifically selected by the members of ~~such the board~~, and its executive secretary, jointly shall have the power to recommend the issuance of such permits between the meetings of the board, which permits shall be subject to approval or disapproval at the next meeting of the ~~Board of Examiners in Pharmacy board~~.

Sec. 123. Section 71-1,147.30, Reissue Revised Statutes of Nebraska, is amended to read:

71-1,147.30. The recipient of a temporary educational permit shall pay an annual registration fee of fifteen dollars or any additional amount deemed necessary by the ~~Department of Health and Human Services Regulation and Licensure department~~, upon recommendation of the ~~Board of Examiners in Pharmacy board~~, and established by departmental rule and regulation to carry out the provisions of sections 71-1,147.17 to 71-1,147.32. In no case shall such fee exceed twenty-five dollars.

Sec. 124. Section 71-1,147.31, Reissue Revised Statutes of Nebraska, is amended to read:

71-1,147.31. Any temporary educational permit granted under the authority of sections 71-1,147.17 to 71-1,147.32 may be suspended, limited, or revoked by the ~~Department of Health and Human Services Regulation and Licensure department~~, upon recommendation of the ~~Board of Examiners in Pharmacy board~~, at any time upon a finding that the reasons for issuing such permit no longer exist or that the person to whom such permit has been issued is no longer qualified to hold such permit or for any reason for which a regular license to practice pharmacy could be suspended, limited, or revoked. A hearing on the suspension, limitation, or revocation of the temporary educational permit by the ~~Department of Health and Human Services Regulation and Licensure department~~ shall be held in the same manner as for the denial of a regular license to practice pharmacy. The final order of the Director of Regulation and Licensure may be appealed, and the appeal shall be in accordance with the Administrative Procedure Act.

Sec. 125. Section 71-1,147.38, Reissue Revised Statutes of Nebraska, is amended to read:

71-1,147.38. Not later than one year prior to the date of the termination of the provisions of sections 71-1,142 to 71-1,147.38 relating to supportive pharmacy personnel as provided in section 71-1,147.37, the ~~Department of Health and Human Services Regulation and Licensure department~~ shall conduct a review and evaluation of the effectiveness and impact on the public and the practice of pharmacy of the utilization of supportive pharmacy personnel in the State of Nebraska. Such review shall include a report on the extent to which such personnel are utilized, the primary functions they are conducting, the impact of their use on the cost of prescription medications to the public, an analysis of any incidents of harm to the public related to the use of supportive pharmacy personnel, and such other information as may be necessary to provide a full and complete evaluation of the impact of the utilization of such personnel. Such evaluation shall determine whether the provisions of sections 71-1,142 to 71-1,147.38 relating to the use of supportive pharmacy personnel provide appropriate protection to the public and shall recommend appropriate legislation necessary to enhance public safety and permit the more efficient and economic use of such personnel, if warranted by the study. The department shall conduct such review and evaluation in such manner as to provide for the active participation of members of the profession

of pharmacy, including those supervising supportive pharmacy personnel, members of the ~~Board of Examiners in Pharmacy~~ board, other health care professionals, and members of the general public. A final report of the review and evaluation shall be submitted to the Clerk of the Legislature not later than October 1 of the year immediately preceding the date of termination of the provisions of such sections relating to supportive pharmacy personnel.

Sec. 126. Section 71-1,147.45, Revised Statutes Supplement, 1998, is amended to read:

71-1,147.45. (1) Upon the completion of any hearing with respect to a public health clinic or a dialysis drug or device distributor pursuant to section 71-1,147.44, the director shall have the authority through entry of an order to exercise in his or her discretion any or all of the following powers:

(a) Issue a censure ~~or reprimand~~ against the permittee;

(b) ~~Suspend judgment;~~

~~(c)~~ Place the permittee on probation;

~~(d)~~ (c) Place a limitation or limitations on the permit and upon the right of the permittee to dispense drugs or devices to the extent, scope, or type of operation, for such time, and under such conditions as the director finds necessary and proper. The director shall consult with the board in all instances prior to issuing an order of limitation;

~~(e)~~ (d) Impose a civil penalty not to exceed ~~ten~~ twenty thousand dollars. The amount of the civil penalty, if any, shall be based on the severity of the violation. If any violation is a repeated or continuing violation, each violation or each day a violation continues shall constitute a separate violation for the purpose of computing the applicable civil penalty, if any;

~~(f)~~ (e) Enter an order of suspension of the permit;

~~(g)~~ (f) Enter an order of revocation of the permit; and

~~(h)~~ (g) Dismiss the action.

(2) The permittee shall not dispense drugs or devices after a permit is revoked or during the time for which the permit is suspended. If a permit is suspended, the suspension shall be for a definite period of time to be fixed by the director. The permit shall be automatically reinstated upon the expiration of such period if the current renewal fees have been paid. If the permit is revoked, the revocation shall be permanent, except that at any time after the expiration of two years, application may be made for reinstatement by any permittee whose permit has been revoked. The application shall be addressed to the director but may not be received or filed by him or her unless accompanied by a written recommendation of reinstatement by the board. The department may adopt and promulgate the necessary rules and regulations concerning notice and hearing of such application.

(3) Any civil penalty assessed and unpaid under this section shall constitute a debt to the State of Nebraska which may be collected in the manner of a lien foreclosure or sued for and recovered in a proper form of action in the name of the state in the district court of the county in which the violator resides or owns property. The department shall within thirty days after receipt remit any collected civil penalty to the State Treasurer for credit to the permanent school fund.

Sec. 127. Section 71-1,152.01, Reissue Revised Statutes of Nebraska, is amended to read:

71-1,152.01. The purpose of the Board of ~~Examiners in~~ Veterinary Medicine is to: (1) Provide for the health, safety, and welfare of the citizens; (2) insure that veterinarians serving the public meet minimum standards of proficiency and competency; (3) insure that schools of veterinary medicine and surgery meet the educational needs of the students and qualify students to serve the public in a safe and efficient manner; and (4) control the field of veterinary medicine and surgery in the interest of consumer protection.

Sec. 128. Section 71-1,154, Revised Statutes Supplement, 1998, is amended to read:

71-1,154. When used in the Nebraska Veterinary Practice Act and elsewhere in the Uniform Licensing Law, unless the context otherwise requires:

(1) Animal shall mean any animal other than man and shall include birds, fish, and reptiles, wild or domestic, living or dead, except domestic poultry;

(2) Veterinary medicine and surgery shall include veterinary surgery, obstetrics, dentistry, and all other branches or specialties of veterinary medicine;

(3) Practice of veterinary medicine and surgery shall mean:

(a) To diagnose, treat, correct, change, relieve, or prevent animal disease, deformity, defect, injury, or other physical or mental conditions, including the prescription or administration of any drug, medicine, biologic,

apparatus, application, anesthetic, or other therapeutic or diagnostic substance or technique, and the use of any manual or mechanical procedure for testing for pregnancy, or for correcting sterility, or infertility, or to render advice or recommendation with regard to any of the above;

(b) To represent, directly or indirectly, publicly or privately, an ability and willingness to do any act described in subdivision (a) of this subdivision; and

(c) To use any title, words, abbreviation, or letters in a manner or under circumstances which induce the belief that the person using them is qualified to do any act described in subdivision (a) of this subdivision;

(4) Veterinarian shall mean a person who has received a doctor's degree in veterinary medicine from an accredited school of veterinary medicine;

(5) Licensed veterinarian shall mean a person who is validly and currently licensed to practice veterinary medicine and surgery in this state;

(6) Accredited school of veterinary medicine within the meaning of the Nebraska Veterinary Practice Act shall mean:

(a) One approved by the department upon the recommendation of the board;

(b) A veterinary college or division of a university or college that offers the degree of Doctor of Veterinary Medicine or its equivalent; and

(c) One that conforms to the standards required for accreditation by the American Veterinary Medical Association;

(7) Person shall mean any individual, firm, partnership, limited liability company, association, joint venture, cooperative and corporation, or any other group or combination acting in concert; and whether or not acting as a principal, trustee, fiduciary, receiver, or as any other kind of legal or personal representative, or as the successor in interest, assignee, agent, factor, servant, employee, director, officer, or any other representative of such person;

(8) Board shall mean the ~~State~~ Board of ~~Examiners in~~ Veterinary Medicine and Surgery; and

(9) Department shall mean the Department of Health and Human Services Regulation and Licensure.

Sec. 129. Section 71-1,171, Reissue Revised Statutes of Nebraska, is amended to read:

71-1,171. Board shall mean the Board of ~~Examiners in~~ Veterinary Medicine and Surgery.

Sec. 130. Section 71-1,186, Reissue Revised Statutes of Nebraska, is amended to read:

71-1,186. As used in sections 71-1,186 to 71-1,196 and elsewhere in the Uniform Licensing Law, unless the context otherwise requires:

(1) Board shall mean the Board of ~~Examiners in~~ Audiology and Speech-Language Pathology;

(2) Practice of audiology shall mean the application of principles, methods, and procedures for testing, measuring, and monitoring hearing, preparation of ear impressions and selection of hearing aids, aural rehabilitation, hearing conservation, vestibular testing of patients when vestibular testing is done as a result of a referral by a physician, and instruction related to hearing and disorders of hearing for the purpose of preventing, identifying, evaluating, and minimizing the effects of such disorders and conditions but shall not include the practice of medical diagnosis, medical treatment, or surgery;

(3) Audiologist shall mean an individual who practices audiology and who presents himself or herself to the public by any title or description of services incorporating the words audiologist, hearing clinician, hearing therapist, or any similar title or description of services;

(4) Practice of speech-language pathology shall mean the application of principles, methods, and procedures for the evaluation, monitoring, instruction, habilitation, or rehabilitation related to the development and disorders of speech, voice, or language for the purpose of preventing, identifying, evaluating, and minimizing the effects of such disorders and conditions but shall not include the practice of medical diagnosis, medical treatment, or surgery;

(5) Speech-language pathologist shall mean an individual who presents himself or herself to the public by any title or description of services incorporating the words speech-language pathologist, speech therapist, speech correctionist, speech clinician, language pathologist, language therapist, language clinician, logopedist, communicologist, aphasiologist, aphasia therapist, voice pathologist, voice therapist, voice clinician, phoniatrist, or any similar title, term, or description of services; and

(6) Communication assistant shall mean any person who, following specified training and receiving specified supervision, provides specified limited structured communication services, which are developed and supervised by a licensed audiologist or speech-language pathologist, in the areas in which the supervisor holds licenses.

Sec. 131. Section 71-1,191, Reissue Revised Statutes of Nebraska, is amended to read:

71-1,191. ~~The Board of Examiners in Audiology and Speech-Language Pathology~~ board may recommend to the Department of Health and Human Services Regulation and Licensure department that a national examination in audiology or speech-language pathology be approved in lieu of or in addition to an examination given by the board. When only a national examination is used, no examination fee will be charged by the board. The board shall recommend a passing score to the Department of Health and Human Services Regulation and Licensure department.

Sec. 132. Section 71-1,192, Reissue Revised Statutes of Nebraska, is amended to read:

71-1,192. ~~The Board of Examiners in Audiology and Speech-Language Pathology~~ board may approve, without examination, any person who holds credentials either through licensure in another state or territory of the United States or in the District of Columbia or certification by a nationwide professional accrediting organization, recognized as such by the board, if such licensure or certification is equivalent to the requirements of ~~sections 71-102, 71-107, 71-110, 71-112, 71-113, 71-114, 71-116, 71-121, 71-122, 71-138, 71-139, 71-162, and 71-1,186 to 71-1,196~~ the Uniform Licensing Law.

Sec. 133. Section 71-1,199, Reissue Revised Statutes of Nebraska, is amended to read:

71-1,199. ~~Any insurer having knowledge of any violation of any of the regulatory provisions governing the profession of the practitioner being reported shall report the facts of such violation as known to such insurer to the department unless~~ Unless such knowledge or information is based on confidential medical records protected by the confidentiality provisions of the federal Public Health Services Act, 42 U.S.C. ~~290ee-3 and 290dd-3~~ 290dd-2, and federal administrative rules and regulations:

(1) Any insurer having knowledge of any violation of any of the regulatory provisions governing the profession of the practitioner being reported shall report the facts of such violation as known to such insurer to the department; and

(2) All insurers shall cooperate with the department and provide such information as requested by the department concerning any possible violations by any practitioner.

Sec. 134. Section 71-1,200, Reissue Revised Statutes of Nebraska, is amended to read:

71-1,200. Any insurer shall report to the department, on a form and in the manner specified by the department by rule and regulation, any facts known to the insurer, including, but not limited to, the identity of the practitioner and patient, when the insurer:

(1) Has reasonable grounds to believe that a practitioner has committed a violation of the regulatory provisions governing the profession of such practitioner;

(2) Has made payment due to an adverse judgment, settlement, or award resulting from a professional liability claim against the insurer, a health care facility as defined in section 71-2017.01, or a practitioner, including settlements made prior to suit, arising out of the acts or omissions of the practitioner; ~~or~~

(3) Takes an adverse action affecting the coverage provided by the insurer to a practitioner due to alleged incompetence, negligence, unethical or unprofessional conduct, or physical, mental, or chemical impairment. For purposes of this section, adverse action shall not include raising a practitioner's rates for professional liability coverage unless it is based upon grounds that would be reportable and no prior report has been made to the department; or

(4) Has been requested by the department to provide information.

The report shall be made within thirty days after the date of the action, ~~or~~ event, or request. Nothing in this section or section 71-1,199 shall be construed to require an insurer to report based on information gained due to the filing by a practitioner or on behalf of a practitioner of a claim for payment under his or her health insurance policy.

Sec. 135. Section 71-1,201, Reissue Revised Statutes of Nebraska, is amended to read:

71-1,201. Any insurer who ~~shall fail or neglect~~ fails or neglects to make a report to or provide such information as requested by the department

pursuant to ~~as required by~~ section 71-1,199 or 71-1,200 within a reasonable time ~~is shall be~~ guilty of a Class IV misdemeanor, unless such insurer ~~shall have has~~ reported the required facts to a law enforcement agency.

Sec. 136. Section 71-1,206.02, Reissue Revised Statutes of Nebraska, is amended to read:

71-1,206.02. Board shall mean the Board of ~~Examiners of~~ Psychologists.

Sec. 137. Section 71-1,206.11, Reissue Revised Statutes of Nebraska, is amended to read:

71-1,206.11. Special meetings of the board may be held at such times as may be deemed necessary or advisable by the board or a majority of its members. Reasonable notice of all meetings shall be given in the manner prescribed by the rules of the board. When the ~~layperson~~ public member is authorized to vote, four members shall constitute a quorum. When the ~~layperson~~ public member is not authorized to vote, three members shall constitute a quorum. All actions taken by the board shall require agreement among a majority of those members authorized to vote. The secretary of the board shall be selected by the board and shall hold office at the pleasure of the board. The secretary may or may not be a member of the board.

Sec. 138. Section 71-1,227, Reissue Revised Statutes of Nebraska, is amended to read:

71-1,227. As used in sections 71-1,227 to 71-1,237, 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 71-1,229;

(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. 139. Section 71-1,237, Revised Statutes Supplement, 1998, is amended to read:

71-1,237. The Respiratory Care Practitioners Fund is hereby created. All money in the fund shall be used exclusively by the department to carry out its statutory and regulatory duties pertaining to the practice of respiratory care. The State Treasurer shall credit to the fund all license and renewal fees for the practice of respiratory care remitted to the State Treasurer by the department pursuant to section 71-162 except such amount distributed pursuant to ~~sections 33-150 and section~~ 71-6228. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

Sec. 140. Section 71-1,238, Reissue Revised Statutes of Nebraska, is amended to read:

71-1,238. As used in sections 71-1,238 to 71-1,243, unless the context otherwise requires:

(1) Athletic trainer shall mean a person who is responsible for the prevention, emergency care, first aid, treatment, and rehabilitation of athletic injuries to athletes under his or her care and who is licensed to

perform the functions set out in section 71-1,240;

(2) Athletic training shall mean the prevention, evaluation, emergency care, first aid, treatment, and rehabilitation of athletic injuries utilizing the treatments set out in section 71-1,240;

(3) Athletic injuries shall mean those injuries which are incurred by individuals through participation in sports or recreation;

(4) Board shall mean the Board of ~~Examiners~~ in Athletic Training; and

(5) Department shall mean the Department of Health and Human Services Regulation and Licensure.

Sec. 141. Section 71-1,243, Revised Statutes Supplement, 1998, is amended to read:

71-1,243. The Athletic Trainer Fund is hereby created. All money in the fund shall be used exclusively by the department to carry out the statutory and regulatory duties pertaining to the practice of athletic training. The State Treasurer shall credit to the fund all certification and renewal fees for the practice of athletic training remitted to the State Treasurer by the department pursuant to section 71-162 except such amounts distributed pursuant to ~~sections 33-150 and section~~ 71-6228. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

Sec. 142. Section 71-1,278, Reissue Revised Statutes of Nebraska, is amended to read:

71-1,278. (1) For purposes of sections 71-1,278 to 71-1,283, unless the context otherwise requires:

(a) An approved massage therapy school shall be (i) one which is approved by the department upon the recommendation of the Board of ~~Examiners~~ in Massage Therapy, (ii) one which requires for admission a diploma from an accredited high school or its equivalent, (iii) one which has attached to its staff a regularly licensed physician and employs one or more competent massage therapists as instructors, and (iv) one which has a minimum requirement of a continuous course of study and training of not less than one thousand hours distributed over a term of not less than nine months. Such study and training shall consist of one hundred hours of each of the following: Physiology; anatomy; massage; pathology; hydrotherapy; hygiene and practical demonstration; and health service management. The remaining three hundred hours shall be obtained in subject areas related to the clinical practice of massage therapy;

(b) Massage therapist shall mean a person licensed to practice massage therapy;

(c) Massage therapy shall mean the physical, mechanical, or electrical manipulation of soft tissue for the therapeutic purposes of enhancing muscle relaxation, reducing stress, improving circulation, or instilling a greater sense of well-being and may include the use of oil, salt glows, heat lamps, and hydrotherapy. Massage therapy shall not include diagnosis or treatment or use of procedures for which a license to practice medicine or surgery, chiropractic, or podiatry is required nor the use of microwave diathermy, shortwave diathermy, ultrasound, transcutaneous electrical nerve stimulation, electrical stimulation of over thirty-five volts, neurological hyperstimulation, or spinal and joint adjustments; and

(d) Massage therapy establishment shall mean any duly licensed place in which a massage therapist practices his or her profession of massage therapy.

(2) The department shall adopt and promulgate rules and regulations as it may deem necessary with reference to the conditions under which the practice of massage therapy shall be carried on and the precautions necessary to be employed to prevent the spread of infectious and contagious diseases. The department shall have the power to enforce sections 71-1,278 to 71-1,283 and all necessary inspections in connection therewith.

Sec. 143. Section 71-1,281, Reissue Revised Statutes of Nebraska, is amended to read:

71-1,281. Every applicant for an initial license to practice massage therapy shall (1) present satisfactory evidence that he or she is a resident of this state and has attained the age of nineteen years and is of good moral character, (2) present proof of graduation from an approved massage therapy school, and (3) pass an examination prescribed by the Board of ~~Examiners~~ in Massage Therapy.

Sec. 144. Section 71-1,281.01, Reissue Revised Statutes of Nebraska, is amended to read:

71-1,281.01. A temporary license to practice massage therapy may be granted to any person who meets all the requirements for a license except

passage of the licensure examination required by section 71-1,281. A temporary licensee shall be supervised in his or her practice by a licensed massage therapist. A temporary license shall be valid only until the results of the next examination are available to the department. In the event a temporary licensee fails the examination required by such section, the temporary license shall be revoked, except that the department upon recommendation of the Board of ~~Examiners in~~ Massage Therapy may extend the temporary license upon a showing of good cause why such license should be extended. A temporary license may not be extended beyond one year. A temporary license shall not be issued to any person failing the examination if such person did not hold a valid temporary license prior to his or her failure to pass the examination.

The department shall establish and collect a fee of not less than ten dollars or more than fifty dollars for issuance or extension of a temporary license. The department shall have the power to deny or revoke a temporary license to practice massage therapy upon the grounds and in accordance with the Uniform Licensing Law.

Sec. 145. Section 71-1,283, Revised Statutes Supplement, 1998, is amended to read:

71-1,283. The Massage Therapy Fund is hereby created. All money in the fund shall be used exclusively by the department to carry out the statutory and regulatory duties pertaining to the practice of massage therapy. The State Treasurer shall credit to the fund all certification and renewal fees for the practice of massage therapy remitted to the State Treasurer by the department pursuant to section 71-162 except such amounts distributed pursuant to ~~sections 33-150 and section~~ 71-6228. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

Sec. 146. Section 71-1,286, Reissue Revised Statutes of Nebraska, is amended to read:

71-1,286. As used in sections 71-1,285 to 71-1,294, unless the context otherwise requires:

(1) Assessment means the process of evaluating the nutritional status of patients. The assessment includes review and analysis of medical and diet histories, biochemical lab values, and anthropometric measurements to determine nutritional status and appropriate nutritional treatment;

(2) Board means the Board of ~~Examiners in~~ Medical Nutrition Therapy;

(3) Consultation means conferring with a physician regarding the activities of the licensed medical nutrition therapist;

(4) General nutrition services includes, but is not limited to:

(a) Identifying the nutritional needs of individuals and groups in relation to normal nutritional requirements; and

(b) Planning, implementing, and evaluating nutrition education programs for individuals and groups in the selection of food to meet normal nutritional needs throughout the life cycle;

(5) Licensed medical nutrition therapist means a person who is licensed to practice medical nutrition therapy pursuant to the Uniform Licensing Law and who holds a current license issued by the department pursuant to section 71-1,290;

(6) Medical nutrition therapy means the assessment of the nutritional status of patients. It involves the assessment of patient nutritional status followed by treatment, ranging from diet modification to specialized nutrition support, such as determining nutrient needs for enteral and parenteral nutrition, and monitoring to evaluate patient response to such treatment; and

(7) Patient means a person with a disease, illness, injury, or medical condition for which nutritional interventions are an essential component of standard care.

Sec. 147. Section 71-1,288, Revised Statutes Supplement, 1998, is amended to read:

71-1,288. The Medical Nutrition Therapy Fund is created. All money in the fund shall be used exclusively by the department to carry out the statutory and regulatory duties pertaining to the practice of medical nutrition therapy. The State Treasurer shall credit to the fund all licensure and renewal fees for the practice of medical nutrition therapy remitted to the State Treasurer by the department pursuant to section 71-162 except such amounts distributed pursuant to ~~sections 33-150 and section~~ 71-6228. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

Sec. 148. Section 71-1,298, Reissue Revised Statutes of Nebraska,

is amended to read:

71-1,298. Board shall mean the Board of ~~Examiners in~~ Mental Health Practice.

Sec. 149. Section 71-1,334, Revised Statutes Supplement, 1998, is amended to read:

71-1,334. The Mental Health Practice Fund is hereby created. The money in the fund shall be used by the department to carry out the statutory and regulatory duties pertaining to mental health practice.

The State Treasurer shall credit to the fund all licensure and renewal fees for mental health practice and certification and renewal fees for social work, professional counseling, and marriage and family therapy remitted by the department pursuant to section 71-162 except the amounts distributed pursuant to ~~sections 33-150 and~~ section 71-6228.

Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

Sec. 150. Section 71-1,335, Reissue Revised Statutes of Nebraska, is amended to read:

71-1,335. No person licensed or certified pursuant to sections 71-1,295 to 71-1,338 shall disclose any information he or she may have acquired from any person consulting him or her in his or her professional capacity except:

(1) With the written consent of the person or, in the case of death or disability, of the person's personal representative, any other person authorized to sue on behalf of the person, or the beneficiary of an insurance policy on the person's life, health, or physical condition. When more than one person in a family receives therapy conjointly, each such family member who is legally competent to execute a waiver shall agree to the waiver referred to in this subdivision. Without such a waiver from each family member legally competent to execute a waiver, a practitioner shall not disclose information received from any family member who received therapy conjointly;

(2) As such privilege is limited by the laws of the State of Nebraska or as the Board of ~~Examiners in~~ Mental Health Practice may determine by rule and regulation;

(3) When the person waives the privilege by bringing charges against the licensee; or

(4) When there is a duty to warn under the limited circumstances set forth in section 71-1,336.

Sec. 151. Section 71-1,337, Reissue Revised Statutes of Nebraska, is amended to read:

71-1,337. The Board of ~~Examiners in~~ Mental Health Practice shall adopt a code of ethics which is essentially in agreement with the current code of ethics of the national and state associations of the specialty professions included in mental health practice and which the board deems necessary to assure adequate protection of the public in the provision of mental health services to the public. A violation of the code of ethics shall be considered an act of unprofessional conduct.

The board shall ensure through the code of ethics and the rules and regulations adopted and promulgated under sections 71-1,295 to 71-1,338 that persons licensed or certified pursuant to sections 71-1,295 to 71-1,338 limit their practice to demonstrated areas of competence as documented by relevant professional education, training, and experience.

Intentional failure by a mental health practitioner to report known acts of unprofessional conduct by a mental health practitioner to the department or the board shall be considered an act of unprofessional conduct and shall be grounds for disciplinary action under appropriate sections of the Uniform Licensing Law unless the mental health practitioner has acquired such knowledge in a professional relationship otherwise protected by confidentiality.

Sec. 152. Section 71-1301, Reissue Revised Statutes of Nebraska, is amended to read:

71-1301. For purposes of sections 71-1301 to 71-1306 and 71-1326 to 71-1354, unless the context otherwise requires:

(1) Accredited school of mortuary science shall mean a school of the same type as those rated Class A by the Conference of Funeral Service Examining Boards of the United States, Inc., approved by the department upon recommendation of the board;

(2) Apprentice shall mean a person registered with the department as an apprentice who is completing a twelve-month apprenticeship under the supervision of a licensed funeral director and embalmer practicing in the State of Nebraska. The licensed funeral director and embalmer shall be

responsible for all funeral assists and embalmings completed by the apprentice;

(3) Board shall mean the Board of ~~Examiners in~~ Funeral Directing and Embalming;

(4) Branch establishment shall mean a place of business situated at a specific street address or location which is a subsidiary of a licensed funeral establishment, which contains a casket display room, a viewing area, or an area for conducting funeral services, or all of them, and where any portion of the funeral service or arrangements for the disposition of a dead human body is conducted;

(5) Casket shall mean a receptacle for a dead human body and shall not include vaults, lawn crypts, mausoleums, or other outside receptacles for caskets;

(6) Department shall mean the Department of Health and Human Services Regulation and Licensure;

(7) Embalming shall mean the practice of preparing a dead human body for burial or other final disposal by a licensed funeral director and embalmer or an apprentice, requesting and obtaining burial or removal permits, or assuming any of the other duties incident to the practice of embalming. Any person who publicly professes to be a funeral director and embalmer or an apprentice shall be deemed to be practicing embalming. The performance of the following acts shall also be deemed the practice of embalming: (a) The disinfection and preservation of dead human beings, entire or in part; and (b) the attempted disinfection and preservation thereof by the use or application of chemical substances, fluids, or gases ordinarily used, prepared, or intended for such purposes, either by outward application of such chemical substances, fluids, or gases on the body or by introducing them into the body, by vascular or hypodermic injection, or by direct introduction into the organs or cavities;

(8) Funeral directing shall mean (a) counseling families or next of kin in regard to the conduct of a funeral service for a dead human body for burial, disposition, or cremation or directing or supervising burial, disposition, or cremation of dead human bodies. Cremation shall be considered as a final disposition of a dead human body the same as interment, (b) providing for or maintaining a funeral establishment, or (c) the act of representing oneself as or using in connection with one's name the title of funeral director, mortician, or any other title implying that he or she is engaged in the business of funeral directing;

(9) Funeral establishment shall mean a place of business situated at a specific street address or location devoted to the care and preparation of dead human bodies for burial, disposition, or cremation or to conducting or arranging funeral services for dead human bodies;

(10) Licensee shall mean a person licensed by the department as a funeral director and embalmer on or after January 1, 1994, or a person licensed as a funeral director or embalmer prior to January 1, 1994;

(11) Licensure examination shall mean a national standardized examination, the state jurisprudence examination, and the vital statistic forms examination; and

(12) Supervision shall mean the direct oversight or the easy availability of the supervising funeral director and embalmer. The first twenty-five funeral assists and embalmings shall be completed under direct onsite supervision of the supervising funeral director and embalmer.

Sec. 153. Section 71-1305, Reissue Revised Statutes of Nebraska, is amended to read:

71-1305. The board of ~~examiners~~ shall have the privileges extended to them for the use of bodies for dissection, demonstrating, and teaching under the requirements of the State Anatomical Board for the distribution and delivery of dead human bodies.

Sec. 154. Section 71-1333.01, Reissue Revised Statutes of Nebraska, is amended to read:

71-1333.01. (1) The department shall deny an application for a license as a funeral establishment or branch establishment, revoke or suspend a license, or refuse renewal of such a license on any of the following grounds:

- (a) Conviction of any crime involving moral turpitude;
- (b) Obtaining a license as a funeral establishment or a branch establishment by false representation or fraud;
- (c) Operating a funeral establishment or branch establishment without a manager responsible for the operations of the establishment;
- (d) A conviction of a violation of any of the provisions of sections 71-147, 71-148, 71-1301 to 71-1306, and 71-1326 to 71-1354;
- (e) Unprofessional conduct, which is hereby defined to include (i)

misrepresentation or fraud in the conduct of a funeral establishment or branch establishment or (ii) aiding or abetting an unlicensed person to practice funeral directing and embalming; or

(f) Violation of the rules and regulations governing the practice of funeral directing and embalming.

(2) If the department determines to deny the application for a license as or to revoke, suspend, or refuse renewal of the license of a funeral establishment or branch establishment, it shall send to the applicant or licensee, by certified mail, a notice setting forth the particular reasons for the determination. The denial, revocation, suspension, or refusal of renewal shall become final thirty days after the mailing of the notice unless the applicant or licensee, within such thirty-day period, requests a hearing in writing. The applicant or licensee shall be given a fair hearing before the department and may present such evidence as may be proper. On the basis of such evidence, the determination involved shall be affirmed or set aside and a copy of such decision setting forth the finding of facts and the particular reasons upon which it is based shall be sent by certified mail to the applicant or licensee. The decision shall become final thirty days after a copy of such decision is mailed unless the applicant or licensee within such thirty-day period appeals the decision pursuant to section 71-1333.03. The procedure governing hearings authorized by this section shall be in accordance with rules and regulations adopted and promulgated by the department. A full and complete record shall be kept of all proceedings. Witnesses may be subpoenaed by either party and shall be allowed a fee at a rate prescribed by the rules and regulations of the department.

(3) The proceeding shall be summary in its nature and triable as an equity action. Affidavits may be received in evidence in the discretion of the ~~Department of Health and Human Services Regulation and Licensure department~~. The department shall have the power to administer oaths, to subpoena witnesses and compel their attendance, and to issue subpoenas duces tecum and require the production of books, accounts, and documents in the same manner and to the same extent as the district courts of the state. Depositions may be used by either party. Upon the completion of any hearing, the director may, through entry of an order, exercise in his or her discretion any or all of the following powers:

(a) Issue a censure ~~or reprimand~~ against the manager;

(b) ~~Suspend judgment;~~

~~(c)~~ Place the manager on probation;

~~(d)~~ (c) Place a limitation or limitations on the license and upon the right of the manager to operate a funeral establishment or branch establishment to the extent, scope, or type of operation, for such time, and under such conditions as the director finds necessary and proper. The director shall consult with the board in all instances prior to issuing an order of limitation;

~~(e)~~ (d) Impose a civil penalty not to exceed ~~ten~~ twenty thousand dollars;

~~(f)~~ (e) Enter an order of suspension of the license;

~~(g)~~ (f) Enter an order of revocation of the license; or

~~(h)~~ (g) Dismiss the action.

(4) The manager of a funeral establishment or branch establishment shall not operate such establishment after its license is revoked or during the time for which it is suspended. If a funeral establishment or branch establishment license is suspended, the suspension shall be for a definite period of time to be fixed by the director. Such license shall be automatically reinstated upon the expiration of such period if the current renewal fees have been paid. If such license is revoked, such revocation shall be permanent, except that at any time after the expiration of two years application may be made for reinstatement of any manager whose funeral establishment or branch establishment license has been revoked. Such application shall be addressed to the director but may not be received or filed by him or her unless accompanied by a written recommendation of reinstatement by the board.

(5) The amount of any civil penalty assessed under this section shall be based on the severity of the violation. If any violation is a repeated or continuing violation, each violation or each day a violation continues shall constitute a separate violation for the purpose of computing the applicable civil penalty, if any. The department may adopt and promulgate the necessary rules and regulations concerning notice and hearing of such application. Any civil penalty assessed and unpaid under this section shall constitute a debt to the State of Nebraska which may be collected in the manner of a lien foreclosure or sued for and recovered in a proper form of action in the name of the state in the district court of the county in which

the violator resides or owns property. The department shall within thirty days from receipt remit any collected civil penalty to the State Treasurer for credit to the permanent school fund.

Sec. 155. Section 71-1730, Revised Statutes Supplement, 1998, is amended to read:

71-1730. In order to obtain a certificate from the department as a certified registered nurse anesthetist an applicant shall:

- (1) Hold a license as a registered nurse in the State of Nebraska;
- (2) Submit a completed application verified by oath which includes the applicant's social security number;
- (3) Pay a licensure fee not in excess of fifty dollars;
- (4) Submit evidence of successful completion of a course of study in anesthesia in a school of nurse anesthesia accredited or approved by or under the auspices of the department or the Council on Accreditation of Nurse Anesthesia and Educational Programs; and
- (5) Take and successfully pass a certifying examination approved by the department after prior approval of such examination by the Board of Nursing and Board of ~~Examiners in~~ Medicine and Surgery. Such examination may include (a) the National Qualifying Examination for Certified Registered Nurse Anesthetists or (b) any other approved recognized national qualifying examination for nurse anesthetists.

If more than five years have elapsed since the applicant completed the nurse anesthetist program or since the applicant has practiced as a nurse anesthetist, he or she shall meet the requirements of subdivisions (1) through (5) of this section and shall provide evidence of continued competence by such means as the Board of Nursing and Board of ~~Examiners in~~ Medicine and Surgery determine, including, but not limited to, a reentry program, supervised practice, or examination.

Sec. 156. Section 71-1731, Reissue Revised Statutes of Nebraska, is amended to read:

71-1731. The department, with the prior approval of the Board of Nursing and Board of ~~Examiners in~~ Medicine and Surgery, may grant a temporary certification in the practice of anesthesia for a period of not to exceed one year and under such conditions as the ~~Board of Nursing and Board of Examiners in Medicine and Surgery~~ boards with the approval of the department determine for graduates of an accredited school of nurse anesthesia. The permit may be issued upon application by the graduate for the first certifying examination following his or her graduation and shall be valid pending the results of such examination. Temporary certification may also be granted for a period not to exceed one year to registered nurse anesthetists currently licensed in another state pending completion of the application for Nebraska certification. A temporary permit issued pursuant to this section may be extended at the discretion of the ~~Board of Nursing and Board of Examiners in Medicine and Surgery~~ boards with the approval of the department.

Sec. 157. Section 71-1735, Reissue Revised Statutes of Nebraska, is amended to read:

71-1735. (1) The procedure for biennial recertification as a certified registered nurse anesthetist shall be at the same time and in the same manner as renewal of a license as a registered nurse and shall require:

- (a) A license as a registered nurse in the State of Nebraska;
- (b) Documentation of continued clinical competence, if deemed necessary by the Board of Nursing and Board of ~~Examiners in~~ Medicine and Surgery, either by reference, peer review, or examination; and
- (c) Payment of a biennial recertification fee not in excess of thirty dollars.

(2) Violations of the Advanced Registered Nurse Practitioner Act shall be dealt with in the manner prescribed in sections 71-1725, 71-1726, and 71-1737.

(3) All fees received pursuant to sections 71-1727 to 71-1737 shall be processed in the same manner as fees received pursuant to the Nurse Practice Act.

Sec. 158. Section 71-1736, Reissue Revised Statutes of Nebraska, is amended to read:

71-1736. (1) The Board of Nursing and Board of ~~Examiners in~~ Medicine and Surgery shall appoint three certified registered nurse anesthetists which may be from a list furnished by the Nebraska Association of Nurse Anesthetists to an advisory council. The first appointments shall be one certified registered nurse anesthetist for a one-year term, one certified registered nurse anesthetist for a two-year term, and one certified registered nurse anesthetist for a three-year term. Thereafter, one certified registered nurse anesthetist shall be appointed each year for a three-year term. The ~~Board of Nursing and Board of Examiners in Medicine and Surgery~~ boards shall

also appoint one nonvoting board-certified anesthesiologist each two years for a term of two years, which appointment may be from a list of names submitted by the Nebraska Society of Anesthesiologists.

(2) The advisory council shall:

(a) Act as consultant in matters pertaining to nurse anesthesia education and the scope of nurse anesthesia practice;

(b) Function as a resource in matters pertaining to grievances or arbitration;

(c) Act as a resource body in matters pertaining to disciplinary action; and

(d) Review certification requirements.

Sec. 159. Section 71-1737, Reissue Revised Statutes of Nebraska, is amended to read:

71-1737. Notwithstanding the provisions of any other statute, any person, corporation, association, or other entity who engages in any of the following activities shall be guilty of a Class IV felony:

(1) Engaging in the practice of anesthesia as a certified registered nurse anesthetist without being issued a certificate as such by the department, with the approval of the Board of Nursing and the Board of ~~Examiners in~~ Medicine and Surgery;

(2) Knowingly employing or offering to employ any person as a certified registered nurse anesthetist when knowing that such person is not certified as such by the ~~Department of Health and Human Services Regulation and Licensure, department~~ with the approval of the ~~board and the board of examiners~~ boards;

(3) Fraudulently seeking, obtaining, or furnishing a certificate as a certified registered nurse anesthetist, or aiding and abetting such activities; or

(4) Using in connection with his or her name the title certified registered nurse anesthetist, the abbreviation C.R.N.A., or any other designation tending to imply that he or she is a certified registered nurse anesthetist, certified by the department with the approval of the ~~board and the board of examiners~~ boards pursuant to sections 71-1729 to 71-1737, when such person is not actually a certified registered nurse anesthetist.

Sec. 160. Section 71-1740, Reissue Revised Statutes of Nebraska, is amended to read:

71-1740. For purposes of the Nebraska Certified Nurse Midwifery Practice Act, unless the context otherwise requires, the definitions found in sections ~~71-1741~~ 71-1743 to 71-1751 shall apply.

Sec. 161. Section 71-1743, Reissue Revised Statutes of Nebraska, is amended to read:

71-1743. Boards shall mean both the Board of Nursing and the Board of ~~Examiners in~~ Medicine and Surgery.

Sec. 162. Section 71-1758, Reissue Revised Statutes of Nebraska, is amended to read:

71-1758. There shall be created an advisory council known as the Council of Certified Nurse Midwifery which shall be composed of two certified nurse midwives chosen by the Board of Nursing, one public member ~~of the general public~~ chosen by the Governor, and two licensed practitioners chosen by the Board of ~~Examiners in~~ Medicine and Surgery. The licensed practitioners shall have collaborative relationships with certified nurse midwives. When a sufficient number of nurse midwives have been certified, the terms of office of council members shall be two years, except that of those members appointed to the initial council, one certified nurse midwife member, one practitioner member, and the public member ~~from the general public~~ shall each be appointed to serve a one-year term. Council members may serve no more than two consecutive terms. The boards may remove from the council any council member for neglect of duty, incompetence, or unprofessional conduct. In the event that a vacancy occurs on the council, the boards shall appoint a successor from the category vacated for the remaining portion of the unexpired term. The council shall hold meetings as it deems necessary. A majority of the council shall constitute a quorum at any meeting.

The purpose of the advisory council, which shall be under the supervision of and directly responsible to the boards, shall be to advise and make recommendations to the boards.

Sec. 163. Section 71-2407, Reissue Revised Statutes of Nebraska, is amended to read:

71-2407. (1) No person operating outside of the State of Nebraska shall ship, mail, or in any manner deliver dispensed prescription drugs into the State of Nebraska unless such person:

(a) Is licensed as a pharmacist in the United States;

(b) Has filed with the Department of Health and Human Services

Regulation and Licensure evidence of a pharmacy license or permit issued by and valid in the state in which the person is located and from which such prescription drugs will be shipped, mailed, or otherwise delivered;

(c) Is located and operating in a state in which the requirements and qualifications for obtaining and maintaining a pharmacy license or permit are considered by the Department of Health and Human Services Regulation and Licensure, with the approval of the Board of ~~Examiners in~~ Pharmacy, to be substantially equivalent to the requirements contained in sections 71-1,142 to 71-1,147.38;

(d) Has designated the Secretary of State as his, her, or its agent for service of process in this state; and

(e) Has paid a fee equivalent to the annual fee for an initial or renewal permit to operate a pharmacy in the State of Nebraska as established in and at the times provided for in section 71-1,147.07. Such fees shall be remitted to the State Treasurer for credit to the Nebraska Pharmaceutical Fund.

(2) This section shall not apply to prescription drugs mailed, shipped, or otherwise delivered by a pharmaceutical company to a laboratory for the purpose of conducting clinical research.

(3) For purposes of this section and section 71-2408, prescription drug shall have the definition found in section 71-1,142.

Sec. 164. Section 71-2408, Reissue Revised Statutes of Nebraska, is amended to read:

71-2408. The Department of Health and Human Services Regulation and Licensure, upon the recommendation of the Board of ~~Examiners in~~ Pharmacy, shall notify the Attorney General of any possible violations of the Mail Service Prescription Drug Act. If the Attorney General has reason to believe that an out-of-state person is operating in violation of the act, he or she shall commence an action in the district court of Lancaster County to enjoin any such person from further mailing, shipping, or otherwise delivering prescription drugs into the State of Nebraska.

Sec. 165. Section 71-2409, Reissue Revised Statutes of Nebraska, is amended to read:

71-2409. The Department of Health and Human Services Regulation and Licensure shall, upon the recommendation of the Board of ~~Examiners in~~ Pharmacy, adopt and promulgate rules and regulations, including rules and regulations for enforcement, necessary to carry out the Mail Service Prescription Drug Act.

Sec. 166. Section 71-2413, Reissue Revised Statutes of Nebraska, is amended to read:

71-2413. (1) The supplying pharmacist and the medical director and quality assurance committee of the institution shall jointly determine the drugs, by identity and quantity, to be included in the emergency boxes. Such drugs shall then be approved in advance of placement in emergency boxes by the Board of ~~Examiners in~~ Pharmacy, unless such drugs are included on a general list of drugs previously approved by the ~~board~~ Board of ~~Examiners in~~ Pharmacy for use in emergency boxes. The ~~board~~ Board of ~~Examiners in~~ Pharmacy may adopt a general list of drugs to be included in emergency boxes. The supplying pharmacist shall maintain a list of emergency box drugs in the pharmacy of the supplying pharmacist which is identical to the list on the exterior of the emergency box and shall make such list available to the department upon request. The supplying pharmacist shall obtain a receipt upon delivery of the emergency box to the institution signed by the director of nursing of the institution which acknowledges that the drugs initially placed in the emergency box are identical to the initial list on the exterior of the emergency box. The receipt shall be retained by the supplying pharmacist for a period of two years.

(2) Except for the removal of expired drugs as provided in subsection (4) of this section, drugs shall be removed from emergency boxes only pursuant to a valid prescription order. Whenever access to the emergency box occurs, the valid prescription order and proof of use shall be provided to the supplying pharmacist and shall be recorded on the resident's medical record by authorized personnel of the institution. Removal of any drug from an emergency box by authorized personnel of the institution shall be recorded on a form showing the name of the resident who received the drug, his or her room number, the name of the drug, the strength of the drug, the quantity used, the dose administered, the route of administration, the date the drug was used, the time of usage, the disposal of waste, if any, and the signature of the authorized personnel. The form shall be maintained at the institution for a period of twenty-four months from the date of removal with a copy of the form to be provided to the supplying pharmacist.

(3) Whenever an emergency box is opened the supplying pharmacist

shall be notified by the charge nurse or the director of nursing of the institution within twenty-four hours and the supplying pharmacist or another pharmacist designated by the supplying pharmacist shall restock and refill the box, reseal the box, and update the drug listing on the exterior of the box within seventy-two hours.

(4) Upon the occurrence of the expiration date of any drug in the emergency box, the supplying pharmacist or another pharmacist designated by the supplying pharmacist shall replace the expired drug, reseal the box, and update the drug listing on the exterior of the box.

(5) Immediately upon replacement of an expired drug by the supplying pharmacist or another pharmacist designated by the supplying pharmacist, the expired drug being replaced shall be immediately destroyed within the institution by the supplying pharmacist or another pharmacist designated by the supplying pharmacist, with such destruction witnessed and documented by authorized personnel of the institution. Records pertaining to the documentation of expired drugs which are destroyed by the supplying pharmacist or another pharmacist designated by the supplying pharmacist shall be maintained at the institution for a period of twenty-four months from the date of such destruction, with a copy of such records to be provided to the supplying pharmacist. Drugs in emergency boxes shall be considered inventory of the pharmacy of the supplying pharmacist until such time as they are removed for administration to a resident of the institution or pursuant to subsection (4) of this section.

(6) Authorized personnel of the institution shall examine the emergency boxes once every twenty-four hours and shall immediately notify the supplying pharmacist upon discovering evidence of tampering with any emergency box. Proof of examination by authorized personnel of the institution shall be recorded and maintained at the institution for a period of twenty-four months from the date of examination.

(7) The supplying pharmacist and the medical director and quality assurance committee of the institution shall jointly establish written procedures for the safe and efficient distribution of emergency box drugs.

Sec. 167. Section 71-2416, Reissue Revised Statutes of Nebraska, is amended to read:

71-2416. (1) The department may limit, suspend, or revoke the authority of a supplying pharmacist to maintain emergency boxes in an institution for any violation of the Emergency Box Drug Act. The department may limit, suspend, or revoke the authority of an institution to maintain an emergency box for any violation of the act. The taking of such action against the supplying pharmacist or institution or both shall not prohibit the department from taking other disciplinary actions against the supplying pharmacist or the institution.

(2) If the department determines to limit, suspend, or revoke the authority of a supplying pharmacist to maintain emergency boxes in an institution or to limit, suspend, or revoke the authority of an institution to maintain an emergency box, it shall send to the supplying pharmacist or institution a notice of such determination. The 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. The limitation, suspension, or revocation shall become final thirty days after receipt of the notice unless the supplying pharmacist or institution, within such thirty-day period, requests a hearing in writing. The supplying pharmacist or institution shall be given a fair hearing before the department and may present such evidence as may be proper. On the basis of such evidence, the determination involved shall be affirmed, set aside, or modified, and a copy of such decision setting forth the findings of facts and the particular reasons on which it is based shall be sent to the supplying pharmacist or institution. The parties may appeal the final decision in accordance with the Administrative Procedure Act. Witnesses may be subpoenaed by either party and shall be allowed a fee at the statutory rate.

(3) The procedure governing hearings authorized by the Emergency Box Drug Act shall be in accordance with rules and regulations adopted and promulgated by the department.

(4) The supplying pharmacist or institution shall not maintain an emergency box after his, her, or its authority to maintain such box has been revoked or during the time such authority has been suspended. If the authority is suspended, the suspension shall be for a definite period of time. Such authority shall be automatically reinstated on the expiration of such period. If such authority has been revoked, such revocation shall be permanent, except that at any time after the expiration of two years, application for reinstatement of authority may be made to the department. Any

such application for reinstatement by a supplying pharmacist may not be received by the department unless accompanied by a written recommendation of reinstatement by the Board of ~~Examiners in~~ Pharmacy.

(5) Any person who commits any of the acts prohibited by the act shall be guilty of a Class II misdemeanor. The department may maintain an action in the name of the state against any person for maintaining an emergency box in violation of the act. Each day a violation continues shall constitute a separate violation.

Sec. 168. Section 71-2601, Revised Statutes Supplement, 1998, is amended to read:

71-2601. The State Board of Health shall consist of seventeen members to be appointed by the Governor with the consent of a majority of the members of the Legislature. Two members shall be licensed to practice medicine and surgery in this state, one member shall be licensed to practice dentistry in this state, one member shall be licensed to practice optometry in this state, one member shall be licensed to practice veterinary medicine in this state, one member shall be licensed to practice pharmacy in this state, two members shall be licensed to practice nursing in this state, one member shall be licensed to practice osteopathic medicine and surgery or as an osteopathic physician in this state, one member shall be licensed to practice podiatry in this state, one member shall be licensed to practice chiropractic in this state, one member shall be licensed to practice physical therapy in this state, one member shall be a professional engineer in this state, one member shall be an administrator of a hospital in this state which is licensed pursuant to sections 71-2017 to 71-2029, one member shall be a credentialed mental health professional, and two members shall be ~~laypersons~~ public members who at all times are public-spirited citizens of Nebraska interested in the health of the people of the State of Nebraska and not less than twenty-one years of age. The Governor shall also be an ex officio member of such board but shall be permitted to vote on matters before the board only when necessary to break a tie.

Sec. 169. Section 71-2803, Reissue Revised Statutes of Nebraska, is amended to read:

71-2803. Every applicant for a license to practice physical therapy shall:

(1) Present proof of completion of an approved educational program as defined in section 71-2804;

(2) In the case of an applicant who has been trained as a physical therapist in a foreign country, (a) present documentation of completion of a course of professional instruction substantially equivalent to an approved program accredited by the American Physical Therapy Association or by an equivalent accrediting agency as determined by the Board of ~~Examiners in~~ Physical Therapy and (b) present proof of proficiency in the English language; and

(3) Except as provided in section 71-2805, successfully complete an examination approved by the department on the recommendation of the board.

Sec. 170. Section 71-2804, Reissue Revised Statutes of Nebraska, is amended to read:

71-2804. For purposes of sections 71-2803 to 71-2822, approved educational program shall mean a program of physical therapy or physical therapist assistant education and training approved by the Board of ~~Examiners in~~ Physical Therapy. Such approval may be based on the program's accreditation by the American Physical Therapy Association or by equivalent standards established by the board.

Sec. 171. Section 71-2807, Reissue Revised Statutes of Nebraska, is amended to read:

71-2807. The Board of ~~Examiners in~~ Physical Therapy shall, with the approval of the department, adopt and promulgate rules and regulations as necessary for the administration of sections 71-2801 to 71-2822. Such rules and regulations shall include, but not be limited to, a definition for onsite supervision of a physical therapist assistant and the proper utilization of such assistant by a physical therapist and what constitutes an emergency not requiring onsite supervision of a licensed physical therapist.

Sec. 172. Section 71-2809, Reissue Revised Statutes of Nebraska, is amended to read:

71-2809. As used in sections 71-2808 to 71-2822, unless the context otherwise requires:

(1) Approved program shall mean a program for the education of physical therapist assistants approved by the Department of Health and Human Services Regulation and Licensure upon the recommendation of the Board of ~~Examiners in~~ Physical Therapy;

(2) Board shall mean the Board of ~~Examiners in~~ Physical Therapy;

(3) Department shall mean the Department of Health and Human Services Regulation and Licensure;

(4) Physical therapist assistant shall mean any person who has graduated from a school for physical therapist assistants approved by the department or who has been certified by the board according to subsection (2) of section 71-2815;

(5) Physical therapy aide shall mean a nonlicensed or noncertified worker whose primary function is to perform routine tasks related to the operation of a physical therapy service, but who may assist with physical therapy related activities;

(6) Supervision shall mean responsible supervision and control when a licensed physical therapist assumes legal liability for the services of a physical therapist assistant. Except in cases of emergency or when appropriate duties and protocols have been outlined in the initial application and approved by the board, supervision shall require that the physical therapist shall be present on the premises of the practice site for consultation and direction of the actions of the physical therapist assistant. Such exceptions shall also include but not be limited to ~~(1)~~ (a) ambulating patients, ~~(2)~~ (b) applying hot packs, and ~~(3)~~ (c) performing range of motion exercises. Such supervision may be further defined by rules and regulations promulgated by the department upon the recommendation of the board; and

(7) Trainee shall mean any person who is currently enrolled in an approved program.

Sec. 173. Section 71-4715, Reissue Revised Statutes of Nebraska, is amended to read:

71-4715. (1) There is hereby established a Board of Hearing Aid Instrument Dispensers and Fitters which shall guide, advise, and make recommendations to the department.

(2) Members of the board shall be residents of the state. The board shall consist of three hearing aid instrument dispensers and fitters, one otolaryngologist, one audiologist, and one ~~layperson~~ public member. Each hearing aid instrument dispenser and fitter on the board shall have not less than five years of experience and shall hold a valid license. The ~~layperson~~ public member shall be at least the age of majority, a resident of this state at least five years preceding appointment, and a representative of consumer viewpoints.

(3) All members of the board shall be appointed by the State Board of Health. The term of office of each member shall be for four years, except that of the first members appointed under sections 71-4701 to 71-4719, two shall be appointed for two years, two shall be appointed for three years, and one shall be appointed for four years. The State Board of Health shall appoint the ~~layperson~~ public member as of December 1, 1994, for a term of four years. Before a member's term expires, the State Board of Health shall appoint a successor to take office on the expiration of such term. A vacancy in the office of a member shall be filled by appointment for the unexpired term. The members shall annually designate one member to serve as chairperson and another to serve as secretary-treasurer. No member who has served two or more full terms may be reappointed to the Board of Hearing Aid Instrument Dispensers and Fitters until at least one year after the expiration of his or her most recent full term of office.

(4) Members of the board shall receive for each day actually engaged in the duties of the office a per diem amount of twenty-five dollars and reimbursement for actual and necessary travel and other expenses as provided in sections 81-1174 to 81-1177. Such remuneration and reimbursement shall be paid from appropriations made for this purpose.

(5) The State Board of Health shall have power to remove from office at any time any member of the Board of Hearing Aid Instrument Dispensers and Fitters, after a public hearing pursuant to the Administrative Procedure Act, for physical or mental incapacity to carry out the duties of a board member, for continued neglect of duty, for incompetency, for acting beyond the individual member's scope of authority, for malfeasance in office, for any cause for which a license in the member's profession may be suspended or revoked, for a lack of licensure in the member's profession, or for other sufficient cause.

Sec. 174. Section 71-5403, Revised Statutes Supplement, 1998, is amended to read:

71-5403. (1) Except as limited (a) by this section, when a medical practitioner designates that no drug product selection is permitted, and (b) by subsection (1) of section 71-5404, unless the purchaser instructs otherwise, the pharmacist may drug product select a drug product with the same generic name in the same strength, quantity, dose, and dosage form as the prescribed drug which is, in the pharmacist's professional opinion,

bioequivalent, except that products designated as controlled substances as listed in Schedule I of section 28-405 shall not be interchanged. It shall be the responsibility of the purchaser or the ultimate user to advise or instruct the pharmacist that he or she does not desire drug product selection, and it shall not be mandatory for the pharmacist to drug product select against his or her professional judgment.

(2) The department may adopt and promulgate necessary rules and regulations, upon the joint recommendation of the Board of ~~Examiners in~~ Medicine and Surgery and the Board of ~~Examiners in~~ Pharmacy, relating to (a) bioavailability, (b) fraudulent or misleading advertising pertaining to drug product selection, and (c) the control of conditions in which the prescribing practitioner or purchaser should be advised when drug product selection has been made by the pharmacist.

(3) A medical practitioner duly authorized to prescribe drugs, medicinal substances, or controlled substances may specify in writing or by telephonic communication on each prescription that there shall be no drug product selection for the specified brand name drug in any prescription. The phrase no drug product selection or the notation N.D.P.S. shall be specified on the prescription form or orally communicated by the medical practitioner. The pharmacist shall note N.D.P.S. on the face of the prescription if such is communicated orally by the prescribing medical practitioner.

(4) Each pharmacy shall post a sign in a location easily seen by patrons at the counter where prescriptions are dispensed stating that this pharmacy may be able to select a less expensive drug product which is bioequivalent to the one prescribed by the prescriber unless the purchaser does not approve. The sign shall be provided by the department, at a cost to the pharmacy which shall not exceed the actual cost of printing to the department, and the printing on the sign shall be in block letters not less than one inch in height.

(5) A pharmacist shall not drug product select a product under the provisions of this section unless: (a) The product, if it is in solid dosage form, has been marked with an identification code or monogram directly on the dosage unit; (b) the product has been labeled with an expiration date; (c) the manufacturer, distributor, or packager provides reasonable services to accept return products that have reached their expiration date; and (d) the manufacturer, distributor, or packager maintains recall capabilities for unsafe or defective drugs.

(6)(a) Except as provided in subdivision (b) of this subsection, a pharmacist shall not drug product select a product under this section that is:

- (i) An enteric-coated tablet or capsule;
- (ii) An injectable suspension other than an antibiotic or insulin;
- (iii) A controlled-release product;
- (iv) A suppository containing active ingredients for which systemic absorption is necessary; or

(v) A different delivery system for aerosol and nebulizer drugs.

(b) A pharmacist may drug product select a product set forth in subdivision (a) of this subsection if such product has been determined by the Food and Drug Administration to be bioequivalent and therapeutically equivalent to the prescribed drug.

(7) The department shall maintain a list of drug products for which bioequivalency has been demonstrated and documented either federally or by the state.

Sec. 175. Section 71-6228, Reissue Revised Statutes of Nebraska, is amended to read:

71-6228. The Nebraska Regulation of Health Professions Fund is hereby created. All money in the fund shall be used exclusively for the operation and administration of the Nebraska Regulation of Health Professions Act. ~~The State Treasurer shall credit to the fund five percent of all fees collected on or after July 17, 1984, and prior to March 18, 1988, pursuant to the licensing or regulation of regulated health professions and remitted to the State Treasurer by the Department of Health and Human Services Regulation and Licensure or any board or board of examiners of any regulated health profession. On and after March 18, 1988, the director shall annually determine the percent of all fees collected during that year pursuant to the licensing or regulation of regulated health professions to be credited to the fund, except that such percentage shall not be greater than five percent. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.~~

Sec. 176. Section 71-7405, Reissue Revised Statutes of Nebraska, is amended to read:

71-7405. Board shall mean the Board of ~~Examiners in~~ Pharmacy.

Sec. 177. Original sections 33-151, 33-152, 43-2606, 44-2847, 59-1617, 71-105, 71-107, 71-111, 71-112, 71-112.01, 71-112.03, 71-113, 71-114, 71-115.01, 71-116, 71-117, 71-118, 71-119, 71-120, 71-122, 71-123, 71-124, 71-124.01, 71-128, 71-129, 71-131, 71-132, 71-133, 71-138, 71-139, 71-139.01, 71-140, 71-143, 71-144, 71-161.03, 71-161.04, 71-161.07, 71-161.09, 71-161.13, 71-161.14, 71-161.15, 71-161.19, 71-161.20, 71-168.01, 71-170, 71-171.01, 71-175, 71-175.01, 71-176.01, 71-176.03, 71-179, 71-179.01, 71-180, 71-183.01, 71-185, 71-185.01, 71-185.02, 71-186, 71-193.04, 71-193.14, 71-193.18, 71-193.20, 71-193.22, 71-1,104, 71-1,104.06, 71-1,105, 71-1,106, 71-1,107.01, 71-1,107.02, 71-1,107.04, 71-1,107.05, 71-1,107.09, 71-1,107.10, 71-1,107.11, 71-1,107.13, 71-1,107.14, 71-1,107.16, 71-1,107.25, 71-1,136.02, 71-1,136.03, 71-1,136.09, 71-1,137, 71-1,139.01, 71-1,140, 71-1,144.01, 71-1,144.04, 71-1,145, 71-1,146, 71-1,147.02, 71-1,147.10, 71-1,147.11, 71-1,147.18, 71-1,147.19, 71-1,147.20, 71-1,147.21, 71-1,147.22, 71-1,147.24, 71-1,147.25, 71-1,147.29, 71-1,147.30, 71-1,147.31, 71-1,147.38, 71-1,152.01, 71-1,171, 71-1,186, 71-1,191, 71-1,192, 71-1,199, 71-1,200, 71-1,201, 71-1,206.02, 71-1,206.11, 71-1,227, 71-1,238, 71-1,278, 71-1,281, 71-1,281.01, 71-1,286, 71-1,298, 71-1,335, 71-1,337, 71-1301, 71-1305, 71-1333.01, 71-1731, 71-1735, 71-1736, 71-1737, 71-1740, 71-1743, 71-1758, 71-2407, 71-2408, 71-2409, 71-2413, 71-2416, 71-2803, 71-2804, 71-2807, 71-2809, 71-4715, 71-6228, and 71-7405, Reissue Revised Statutes of Nebraska, sections 28-407, 71-101, 71-108, 71-110, 71-121, 71-121.01, 71-141, 71-155, 71-161.10, 71-162, 71-168, 71-171.02, 71-174.01, 71-1,103, 71-1,135, 71-1,135.02, 71-1,135.03, 71-1,135.04, 71-1,136.01, 71-1,139, 71-1,142, 71-1,147.45, 71-1,154, 71-1,237, 71-1,243, 71-1,283, 71-1,288, 71-1,334, 71-1730, 71-2601, and 71-5403, Revised Statutes Supplement, 1998, and section 71-1,107.30, Reissue Revised Statutes of Nebraska, as amended by section 4, Legislative Bill 379, Ninety-sixth Legislature, First Session, 1999, are repealed.

Sec. 178. The following sections are outright repealed: Sections 33-150, 71-1741, and 71-1742, Reissue Revised Statutes of Nebraska.