

LEGISLATIVE BILL 270

Approved by the Governor March 14, 2001

Introduced by Hudkins, 21

AN ACT relating to the Uniform Licensing Law; to amend sections 71-102 and 71-182, Reissue Revised Statutes of Nebraska, and sections 71-101, 71-110, 71-111, 71-112, 71-112.01, and 71-162, Revised Statutes Supplement, 2000; to provide for licensure for acupuncturists; to create a fund; to provide a standard of practice for chiropractic practitioners; to harmonize provisions; and to repeal the original sections.

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

Section 1. Section 71-101, Revised Statutes Supplement, 2000, is amended to read:

71-101. Sections 71-101 to 71-1,107.30, 71-1,133 to 71-1,338, 71-1,343, 71-1301 to 71-1354, and 71-2801 to 71-2822 and sections 8 to 14 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 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, means a person licensed under the Uniform Licensing Law;

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

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

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

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

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

(8) Lapse means the termination of the right or privilege to represent oneself as a licensed, certified, or registered person and to practice the profession when a license, certificate, or registration is required to do so; 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. 2. Section 71-102, Reissue Revised Statutes of Nebraska, is amended to read:

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

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

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

department for such purpose.

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

Sec. 3. Section 71-110, Revised Statutes Supplement, 2000, is amended to read:

71-110. (1) The 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 credentialed person, without examination. The biennial 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 and acupuncture;
- (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 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 as the act existed on the effective date of this act, persons credentialed to practice the professions listed in this subsection shall not be required to pay the renewal fee.

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

(3) When a person credentialed pursuant to the Uniform Licensing Law desires to have his or her credential placed on inactive status upon its expiration, he or she shall notify the department of such desire in writing and pay a fee of thirty-five dollars. The department shall notify the credentialed person in writing of the acceptance or denial of the request to allow the credential to be placed on inactive status. When the credential is placed on inactive status, the credentialed person shall not engage in the practice of such profession. A credential may remain on inactive status for an indefinite period of time. In order to move a credential from inactive to active status, a person shall 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 credential, the department shall notify each credentialed person by a letter addressed to him or her at his or her last place of residence as noted upon its records. Any credentialed person who fails to notify the department of his or her desire to let his or her credential lapse or be placed on inactive status upon its expiration or who fails to pay the renewal fee on or before the date of expiration of his or her credential shall be given a second notice in the same manner as the first notice advising him or her (a) of the failure to pay, (b) that the 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 credential will be revoked in the manner prescribed in section 71-149.

(5) Any credentialed person who fails to renew his or her credential may be reinstated upon the recommendation of the board 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 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 to recommend reinstatement as prescribed in section 71-161.05.

Sec. 4. Section 71-111, Revised Statutes Supplement, 2000, 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 for each of the professions under the Uniform Licensing Law except osteopathic medicine and surgery and acupuncture.

Sec. 5. Section 71-112, Revised Statutes Supplement, 2000, is amended to read:

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

- (1) For medicine and surgery, acupuncture, and osteopathic medicine and surgery, Board of Medicine and Surgery;
- (2) For athletic training, Board of Athletic Training;
- (3) For respiratory care, Board of Respiratory Care Practice;
- (4) For chiropractic, Board of Chiropractic;
- (5) For dentistry and dental hygiene, Board of Dentistry;
- (6) For optometry, Board of Optometry;
- (7) For massage therapy, Board of Massage Therapy;
- (8) For physical therapy, Board of Physical Therapy;
- (9) For pharmacy, Board of Pharmacy;
- (10) For audiology and speech-language pathology, Board of Audiology and Speech-Language Pathology;
- (11) For medical nutrition therapy, Board of Medical Nutrition Therapy;
- (12) For funeral directing and embalming, Board of Funeral Directing and Embalming;
- (13) For podiatry, Board of Podiatry;
- (14) For psychology, Board of Psychologists;
- (15) For veterinary medicine and surgery, Board of Veterinary Medicine and Surgery; and
- (16) For mental health practice, 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. 6. Section 71-112.01, Revised Statutes Supplement, 2000, is amended to read:

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

Sec. 7. Section 71-162, Revised Statutes Supplement, 2000, 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 acupuncture or 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 credentialed person is credentialed in this state, twenty-five dollars, and for verification that a credentialed person is credentialed in this state, five dollars; and

(l) For a duplicate original or reissued credential, ten dollars.

All money paid as 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, 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. 8. For purposes of sections 8 to 14 of this act and elsewhere in the Uniform Licensing Law, unless the context otherwise requires:

(1) Acupuncture means the insertion, manipulation, and removal of acupuncture needles and the application of manual, mechanical, thermal, electrical, and electromagnetic treatment to such needles at specific points or meridians on the human body in an effort to promote, maintain, and restore health and for the treatment of disease, based on acupuncture theory. Acupuncture may include the recommendation of therapeutic exercises, dietary guidelines, and nutritional support to promote the effectiveness of the acupuncture treatment. Acupuncture does not include manipulation or mobilization of or adjustment to the spine, extraspinal manipulation, or the practice of medical nutrition therapy;

(2) Acupuncturist means a person engaged in the practice of acupuncture; and

(3) Board means the Board of Medicine and Surgery.

Sec. 9. Sections 8 to 14 of this act do not apply to:

(1) Any other health care practitioner credentialed under the Uniform Licensing Law practicing within the scope of his or her profession;

(2) A student practicing acupuncture under the supervision of a person licensed to practice acupuncture under the Uniform Licensing Law as part of a course of study approved by the department; or

(3) The practice of acupuncture by any person licensed or certified to practice acupuncture in any other jurisdiction when practicing in an educational seminar sponsored by a state-approved acupuncture or professional organization if the practice is supervised directly by a person licensed to practice acupuncture under the Uniform Licensing Law.

Sec. 10. It is unlawful to practice acupuncture on a person in this

state unless the acupuncturist is licensed to practice acupuncture under the Uniform Licensing Law and has been presented by the patient with a prior letter of referral from or a medical diagnosis and evaluation completed by a practitioner licensed to practice medicine and surgery or osteopathic medicine and surgery within ninety days immediately preceding the date of an initial acupuncture treatment. An acupuncturist licensed under the Uniform Licensing Law shall provide the same standard of care to patients as that provided by a person licensed under the Uniform Licensing Law to practice medicine and surgery, osteopathy, or osteopathic medicine and surgery.

Sec. 11. The practice of acupuncture shall not be performed upon any person except with the voluntary and informed consent of such person. Information provided in connection with obtaining such informed consent shall include, but not be limited to, the following:

(1) The distinctions and differences between the practice of acupuncture and the practice of medicine;

(2) The disclosure that an acupuncturist is not licensed to practice medicine or to make a medical diagnosis of the person's disease or condition and that a physician should be consulted for such medical diagnosis;

(3) The nature and the purpose of the acupuncture treatment; and

(4) Any medical or other risks associated with such treatment.

Sec. 12. An applicant for an initial license to practice acupuncture shall apply to the department on forms provided by the department. At the time of application, the applicant shall present to the department proof that he or she:

(1) Is nineteen years of age or older and is of good moral character;

(2) Has graduated from, after having successfully completed the acupuncture curriculum requirements of, a formal, full-time acupuncture program at a board-approved university, college, or school of acupuncture which includes at least one thousand seven hundred twenty-five hours of entry-level acupuncture education consisting of a minimum of one thousand didactic and five hundred clinical hours;

(3) Has successfully passed an acupuncture examination approved by the board which shall include a comprehensive written examination in acupuncture theory, diagnosis and treatment technique, and point location; and

(4) Has successfully completed a clean-needle technique course approved by the board.

Sec. 13. The board, with the approval of the department, shall adopt and promulgate rules and regulations regarding the licensing, conduct, and practice of acupuncturists. Such rules and regulations shall be adopted pursuant to the Administrative Procedure Act. The rules and regulations regarding conduct which constitutes sufficient grounds for revocation or suspension of a license or other disciplinary measures shall be deemed to constitute unprofessional conduct under subdivision (10) of section 71-147.

Sec. 14. The Acupuncturist 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 acupuncture. The State Treasurer shall credit to the fund all certification and renewal fees for the practice of acupuncture remitted to the State Treasurer by the department pursuant to section 71-162. 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. 15. Section 71-182, Reissue Revised Statutes of Nebraska, is amended to read:

71-182. Chiropractic practitioners shall observe and be subject to all state and municipal laws and regulations relative to the control of contagious and infectious diseases, and all matters pertaining to public health. They shall report to the proper health officers the same as other practitioners. Chiropractic practitioners may sign death certificates. When performing acupuncture, a chiropractor licensed under the Uniform Licensing Law shall provide the same standard of care to patients as that provided by a person licensed under the Uniform Licensing Law to practice medicine and surgery, osteopathy, or osteopathic medicine and surgery when such person performs acupuncture.

Sec. 16. Original sections 71-102 and 71-182, Reissue Revised Statutes of Nebraska, and sections 71-101, 71-110, 71-111, 71-112, 71-112.01, and 71-162, Revised Statutes Supplement, 2000, are repealed.