

2006

STATE OF NEBRASKA

Statutes, Rules and Regulations

Relating to:

**MANDATORY REPORTING BY HEALTH CARE PROFESSIONALS,
FACILITIES, PEER REVIEW ORGANIZATIONS, PROFESSIONAL
ASSOCIATIONS, AND INSURERS**

TITLE 172 NAC 5



Department of Health and Human Services Regulation and Licensure
Credentialing Division
Nebraska State Office Building
301 Centennial Mall South-Third Floor
P.O. Box 94986
Lincoln, NE 68509-4986

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**STATUTES RELATING TO LICENSES, PROFESSIONAL AND OCCUPATIONAL
Sections Relating To Mandatory Reporting**

ENFORCEMENT PROVISIONS

71-168. Enforcement; investigations; violations; credentialed person; duty to report; cease and desist order; violation; penalty; loss or theft of controlled substance; duty to report; confidentiality; immunity. (1) The department shall enforce the Uniform Licensing Law and for that purpose shall make necessary investigations. Every credentialed person listed under subsection (4) of this section and every member of a professional board shall furnish the department such evidence as he or she may have relative to any alleged violation which is being investigated.

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

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

(4) Every credentialed person regulated under the Advanced Practice Registered Nurse Licensure Act, the Certified Registered Nurse Anesthetist Act, the Clinical Nurse Specialist Practice Act, the Emergency Medical Services Act, the Licensed Practical Nurse-Certified Act, the Nebraska Certified Nurse Midwifery Practice Act, the Nebraska Cosmetology Act, the Nurse Practice Act, the Nurse Practitioner Act, the Occupational Therapy Practice Act, the Uniform Controlled Substances Act, the Uniform Licensing Law except pharmacist interns, the Wholesale Drug Distributor Licensing Act, or sections 71-3702 to 71-3715, 71-4701 to 71-4719, or 71-6053 to 71-6068 shall, within thirty days of an occurrence described in this subsection, report to the department in such manner and form as the department may require by rule and regulation whenever he or she:

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

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

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

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

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

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

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

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

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

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

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

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

Source: Laws 1927, c. 167, §67, p. 472; C.S.1929, §71-901; R.S.1943, §71-168; Laws 1986, LB 286, §74; Laws 1986, LB 579, §66; Laws 1991, LB 456, §23; Laws 1994, LB 1210, §50; Laws 1994, LB 1223, §10; Laws 1995, LB 563, §2; Laws 1996, LB 414, §1; Laws 1997, LB 138, §42; Laws 1997, LB 222, §4; Laws 1999, LB 828, §55; Laws 2000, LB 1115, §12; Laws 2005, LB 256, §21; Laws 2005, LB 306, §3; Laws 2005, LB 361, §32; Laws 2005, LB 382, §5. Note: The changes made by LB 361 became effective April 28, 2005. The changes made by LB 382 became operative May 7, 2005. The changes made by LB 306 became effective September 4, 2005. The changes made by LB 256 became operative July 1, 2007.

71-168.01. Complaint; department; powers and duties; investigation; notices; professional board; recommendation; review by Attorney General; when; confidentiality; immunity; violation; penalty. (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 may review the complaint and provide its recommendation to the department on whether the complaint merits investigation.

(3) A professional board 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 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 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 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 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 or records 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 shall disclose such 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 a Class I misdemeanor.

(8) All meetings of the professional boards 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.

Source: Laws 1991, LB 456, § 6; Laws 1993, LB 536, § 46; Laws 1994, LB 1223, § 11; Laws 1999, LB 828, § 56. Effective date August 28, 1999.

71-168.02. Health care facility, peer review organization, or professional association; violations; duty to report; confidentiality; immunity. (1) A health care facility licensed under the Health Care Facility Licensure Act or a peer review organization or professional association of a health care profession regulated under the Advanced Practice Registered Nurse Licensure Act, the Certified Registered Nurse Anesthetist Act, the Clinical Nurse Specialist Practice Act, the Emergency Medical Services Act, the Licensed Practical Nurse-Certified Act, the Nebraska Certified Nurse Midwifery Practice Act, the Nebraska Cosmetology Act, the Nurse Practice Act, the Nurse Practitioner Act, the Occupational Therapy Practice Act, the Uniform Controlled Substances Act, the Uniform Licensing Law, 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 report to the department, on a form and in the manner specified by the department by rule and regulation, any facts known to them, including, but not limited to, the identity of the practitioner and patient, when the facility, organization, or association:

(a) Has made payment due to adverse judgment, settlement, or award of a professional liability claim against it or a licensee, certificate holder, or registrant, including settlements made prior to suit, arising out of the acts or omissions of the licensee, certificate holder, or registrant; or

(b) Takes action adversely affecting the privileges or membership of a licensee, certificate holder, or registrant in such facility, organization, or association due to alleged incompetence, professional negligence, unprofessional conduct, or physical, mental, or chemical impairment.

The report shall be made within thirty days after the date of the action or event.

(2) 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. The facility, organization, association, or person making such report shall be completely immune from criminal or civil liability of any nature, whether direct or derivative, for filing a report or for disclosure of documents, records, or other information to the department under this section. The reports and information shall be subject to the investigatory and enforcement provisions of the regulatory provisions listed in subsection (1) of this section. Nothing in this subsection shall be construed to require production of records protected by section 25-12,123, 71-2048, or 71-7903 or patient safety work product under the Patient Safety Improvement Act except as otherwise provided in any of such sections or such act.

(3) For purposes of this section, the department shall accept reports made to it under the Nebraska Hospital-Medical Liability Act or in accordance with national practitioner data bank requirements of the federal Health Care Quality Improvement Act of 1986, as amended, and may require a supplemental report to the extent such reports do not contain the information required by rules and regulations of the department.

Source: Laws 1994, LB 1223, §12; Laws 1995, LB 563, §3; Laws 1996, LB 414, §2; Laws 1997, LB 138, §43; Laws 1997, LB 222, §5; Laws 2000, LB 819, §84; Laws 2000, LB 1115, §13; Laws 2005, LB 256, §22; Laws 2005, LB 361, §33. Note: The changes made by LB 361 became effective April 28, 2005. The changes made by LB 256 became operative July 1, 2007.

Title 172 PROFESSIONAL AND OCCUPATIONAL LICENSURE

Chapter 5 MANDATORY REPORTING BY HEALTH CARE PROFESSIONALS,
FACILITIES, PEER REVIEW ORGANIZATIONS, PROFESSIONAL
ASSOCIATIONS, AND INSURERS

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EFFECTIVE DATE
OCTOBER 9, 2006

NEBRASKA HEALTH AND HUMAN SERVICES
REGULATION AND LICENSURE

172 NAC 5

TITLE 172 PROFESSIONAL AND OCCUPATIONAL LICENSURE

CHAPTER 5 MANDATORY REPORTING BY HEALTH CARE PROFESSIONALS, FACILITIES,
PEER REVIEW ORGANIZATIONS, PROFESSIONAL ASSOCIATIONS, AND
INSURERS

5-001 SCOPE AND AUTHORITY: These regulations govern the manner and method in which health care professionals, health care facilities, peer review organizations, professional associations and insurers must report actions or conduct which may violate laws or regulations governing health care professionals who are licensed, certified, or registered by the Department. The authority for these regulations is the Uniform Licensing Law. These regulations do not apply to pharmacist interns.

5-001.01 Voluntary Complaints: Nothing in law or under these regulations is intended to preclude a health care professional, a health care facility, a peer review organization, a professional association, or an insurer from voluntarily reporting information or filing a complaint against a health care professional.

5-001.02 Duty to Provide Information for Investigations: In addition to the requirements of these regulations every health care professional and every member of a professional board must furnish the Department, upon request, such evidence as s/he may have relative to any alleged violations that is being investigated, pursuant to Neb. Rev. Stat. § 71-168.

5-002 DEFINITIONS: Except as the context requires or as is specifically provided, the following definitions apply to these regulations:

Conviction means a finding of guilt for a crime committed. Such finding may be made on a:

1. Verdict of a jury;
2. Non-jury trial before a court or other tribunal; or
3. Upon acceptance of a plea of guilty or no contest without trial.

Department means the Department of Health and Human Services Regulation and Licensure.

Employment means services performed for another for wages or salary, or under agreement or contract in partnership or association with other health care professionals.

Firsthand Knowledge means information or knowledge gleaned directly from the original source through use of the senses, such as an eyewitness.

Gross Incompetence means a demonstrated lack of proficiency, skill or ability to perform the duties and functions of the health care profession to a very high degree.

Health Care Facility means an ambulatory surgical center, an assisted-living facility, a center or group home for the developmentally disabled, a critical access hospital, a general acute hospital, a health clinic, a hospital, an intermediate care facility, an intermediate care facility for the mentally retarded, a long-term care hospital, a mental health center, a nursing facility, a pharmacy, a psychiatric or mental hospital, a public health clinic, a rehabilitation hospital, a skilled nursing facility, or a substance abuse treatment center.

Health Care Professional means an individual regulated by the Department under the Advanced Practice Registered Nurse Licensure Act, the Certified Registered Nurse Anesthetist Act, the Clinical Nurse Specialist Practice Act, Emergency Medical Services Act, the Licensed Practical Nurse-Certified Act, the Nebraska Certified Nurse Midwifery Practice Act, the Nebraska Cosmetology Act, the Nurse Practice Act, the Nurse Practitioner Act, the Occupational Therapy Practice Act, the Uniform Controlled Substances Act, the Uniform Licensing Law, the Wholesale Drug Distributor Licensing Act, or Neb. Rev. Stat. §§71-3702 to 3715, 71-4701 to 71-4719, or 71-6053 to 71-6068.

Licensee Assistance Program means the voluntary program for education, referral assistance, and monitoring of compliance with treatment of habitual intoxication or dependence. Neb. Rev. Stat. §71-172.01.

Pattern of Negligent Conduct means a continued course of failure to use the care, skill and knowledge ordinarily possessed and used under like circumstances by members of the same profession engaged in similar practices in the same or similar localities in performing the duties of the profession.

Payment means monetary compensation made by or on behalf of a health care professional due to acts or omissions of a health care professional in his/her personal or corporate capacity.

Peer Review Organization or Committee means a professional society or committee or agency thereof, including those at the national, state or local level, or a facility's peer review or utilization review committee or similar body, that engages in professional review activities through a formal peer review process to further quality of care, including notice and opportunity for hearing.

Practicing while Impaired:

1. With respect to alcohol, controlled substances or narcotic drugs means demonstrating drug or alcohol use, which diminishes or otherwise impacts the ability to practice safely or competently.
2. With respect to a physical disability means engaging in practice of some or all of the essential functions or duties of a health care profession while the ability to do so safely or competently is diminished or otherwise impacted because of physical limitations.
3. With respect to a mental or emotional disability means engaging in practice of some or all of the essential functions or duties of a health care profession while the ability to do so safely or competently is diminished or otherwise impacted due to a disorder of thought, mood, perception, orientation or memory.

Privileges means the authorization by a facility for a health care professional to provide health care services, including privileges and membership on the medical staff of the facility.

Professional Association, Society or Organization means any organization of individual health care professionals who are required to obtain a license or other legal authorization prior to performing a professional service.

Professional Liability Claim or Claim means a complaint or demand for payment based on a health care professional's provision of or failure to provide health care services, and includes complaints or demands made prior to suit and the filing of a cause of action based on the law of tort brought in any state or federal court or any adjudicative body or agency in the health care professional's personal or corporate capacity.

Uniform Licensing Law means those statutes cited in Neb. Rev. Stat. §71-101.

Unprofessional Conduct means any departure from or failure to conform to the standards of acceptable and prevailing practice of a profession or occupation or the ethics of the profession or occupation, regardless of whether a person, patient, or entity is injured, or conduct that is likely to deceive or defraud the public or is detrimental to the public interest, including:

1. Acts or conduct identified in Uniform Licensing Law;
2. Acts or conduct identified in the practice act or other laws regulating a health care professional;
3. Such other acts as may be defined in rules and regulations adopted and promulgated by the boards of examiners for the health care profession; and
4. Additional conduct determined by adjudication in individual contested cases involving health care professionals.

5-003 REPORTING BY HEALTH CARE PROFESSIONALS: All health care professionals must report as required by these regulations.

5-003.01 Reporting Yourself: A report must be submitted within 30 days of the occurrence of any of the following:

1. You lost your privileges in a hospital or other health care facility due to alleged:
 - a. Incompetence;
 - b. Negligence;
 - c. Unethical or unprofessional conduct; or
 - d. Physical, mental, or chemical impairment.
2. You voluntarily limited your privileges or resigned from the staff of any health care facility while under formal or informal investigation or evaluation by the facility or a committee of the facility for issues of:
 - a. Clinical competence;
 - b. Unprofessional conduct; or
 - c. Physical, mental, or chemical impairment.
3. You lost your employment due to alleged:
 - a. Negligence;
 - b. Unethical or unprofessional conduct; or
 - c. Incompetence;
 - d. Physical, mental, or chemical impairment.

4. You have had a professional liability claim that resulted in an adverse judgement, settlement, or award, including settlements made prior to suit in which the patient releases any professional liability claim against the credentialed person.
 - a. Exception: A settlement as used in 172 NAC 5-003.01 item 4 will not include the following situations:
 - (1) When a health care professional waives either all or part of an outstanding debt to resolve a patient's or client's claim;
 - (2) When a health care professional refunds either all or part of a fee paid for services, products, or devices to resolve a patient's or client's claim; or
 - (3) When a health care professional returns either all or part of any reimbursement to a third party payers for services, products, or devices provided to a patient or client to resolve a claim.
 - b. Inclusion: A settlement as used in 172 NAC 5-003.01 item 4 includes the provision of either money, devices, products or services by a health care professional to a patient or client in an amount that exceeds the total fee charged to a patient or a client to resolve a claim, including settlements made prior to the suit if the patient or client releases any professional liability claim against you. The date of the settlement for the purpose of these regulations is the date of release from the claim.
5. Your professional liability insurance coverage has been cancelled, limited, or otherwise modified due to a professional liability claim.
6. You have been refused professional liability insurance coverage on an initial or renewal basis due to a professional liability claim.
7. You have been denied a credential or other form of authorization to practice by any state, territory, or jurisdiction, including any military or federal jurisdiction, due to alleged:
 - a. Incompetence;
 - b. Negligence;
 - c. Unethical or unprofessional conduct; or
 - d. Physical, mental, or chemical impairment.
8. You have disciplinary action taken against any credential or other form of permit by another state, territory, or jurisdiction, including any federal or military jurisdiction, the settlement of such action, or any voluntary surrender of or limitation on any such credential or other form of permit.
9. You have lost membership in a professional organization due to alleged:
 - a. Incompetence;
 - b. Negligence;
 - c. Unethical or unprofessional conduct; or
 - d. Physical, mental or chemical impairment.

10. You have been convicted of any misdemeanor or felony in Nebraska or any other state, territory, or jurisdiction, including any federal or military jurisdiction.

5-003.01A Information to Report

5-003.01A1 Loss or Voluntary Limitation of Privileges or Resignation from Staff: Reports of this type of action must be made on a form provided by the Department, a copy of which is included and has been made a part of these regulations as Attachment 1; or reports may be made on a form constructed by the reporting party. The report must include the following information:

1. Your name and date of birth;
2. Your home and work addresses and telephone numbers;
3. Your license number;
4. A description of each act or omission or other reason for the loss or voluntary limitation of privileges or resignation from staff including:
 - a. The full name, date of birth, address, and number of the patient or client involved;
 - b. A description of what occurred;
 - c. When it occurred, including the date and time, if known;
 - d. Where it occurred; and
 - e. The name, address, and telephone number of the facility taking action or conducting investigation or evaluation, the nature of the action affecting privileges that was taken, date taken, and effective date of the action.

5-003.01A2 Loss of Employment: Reports of this type of action must be made on a form provided by the Department, a copy of which is included and has been made a part of these regulations as Attachment 1; or reports may be made on a form constructed by the reporting party. The report must include the following information:

1. Your name and date of birth;
2. Your home and work addresses and telephone numbers;
3. Your license number;
4. The name, address, and telephone number of the person or entity taking the action; and
5. A description of each action, omission or other cause that lead to the loss of employment, including :
 - a. The name, address, telephone number of the patient or client or other identifying information for each person affected by the act, omission;
 - b. The date of each act, omission; and
 - c. The location of each act or omission.

5-003.01A3 Professional Liability Report: Reports of this type of action must be made on a form provided by the Department, a copy of which has been included and made part of these regulations as Attachment 1; or reports may be made on a form constructed by the reporting party.

1. The report must include the following information:
 - a. The name, address, and telephone number of the patient, client or other person to whom or for whose behalf payment was made;
 - b. The date the action or claim was filed with a court or other adjudicative body, identification of such court or body by name and address and the case number;
 - c. The name and address of the insurer, employer or other person or entity making payment of the claim;
 - d. The date(s) on which the act(s) or omission(s) which gave rise to the action or claim occurred;
 - e. The location where the act(s) or omissions(s) that gave rise to the action or claim occurred;
 - f. A description of the acts or omissions upon which the action or claim was based;
 - g. The date of judgment, settlement or award; and
 - h. The amount paid, date of payment, and whether payment was made for a judgment, settlement, or award.
 - i. The following information about the health care professional who is the subject of the report:
 - i. Name;
 - ii. Home and work addresses and telephone numbers;
 - iii. License number; and
 - iv. Date of birth.
2. The report must be submitted within 30 days of the occurrence of a payment resulting from:
 - a. An award; or
 - b. An adverse judgement.
3. To avoid duplicative reporting, a report of a malpractice payment to the Department from an insurance company no later than 30 days after the malpractice payment will satisfy the reporting of a malpractice payment by a health care professional.

5-003.01A4 Denial of or Disciplinary Action Against a Credential Report: Reports of this type of action must be made on a form provided by the Department, a copy of which has been included and made part of these regulations as Attachment 1; or reports may be made on a form constructed by the reporting party. This report must include the following information:

1. The name, address and telephone number of the board or other entity taking the action or involved in the settlement or surrender;
2. The license number(s) and professional field(s) affected by the action, settlement or surrender.
3. The date of the action was taken and the date the action became effective ; and
4. The nature of the action and a description of any terms and conditions.
5. The following information about the health care professional who is the subject of the report:

- a. Name;
- b. Home and work addresses and telephone numbers;
- c. License Number; and
- d. Date of birth.

5-003.01A5 Loss of Professional Association Membership Report: Reports of this type of action must be made on a form provided by the Department, a copy of which has been included and made a part of these regulations as Attachment 1; or reports may be made on a form constructed by the reporting party. This report must include the following information:

1. The name, address, and telephone number of the professional association;
2. The date action was taken, the date the action become effective, and the duration of the action; and
3. A description of the facts surrounding the reason(s) given for the action, including:
 - a. The name, address, and telephone number of the patient or client, as applicable;
 - b. The event(s) giving rise to the action;
 - c. When each event occurred;
 - d. Where each event occurred; and
 - e. How each event occurred.
4. The following information about the health care professional who is the subject of the report:
 - a. Name;
 - b. Home and work addresses and telephone numbers;
 - c. License Number; and
 - d. Date of birth.

5-003.01A6 Conviction Report: Reports of this type of action must be made on a form provided by the Department, a copy of which has been included and made a part of these regulations as Attachment 1; or reports may be made on a form constructed by the reporting party. This report must include the following information:

1. The date of conviction;
2. The name and address of the court or other adjudicative body entering the conviction;
3. The case number;
4. The crime for which convicted, including its name and classification;
5. The sentence imposed, including its duration and any terms and conditions imposed; and
6. Whether the conviction is under appeal and, if so, the name and address of the court, case number, and date appeal was filed.
7. The following information about the health care professional who is the subject of the report:
 - a. Name;
 - b. Home and work addresses and telephone numbers;
 - c. License Number; and

- d. Date of birth.

5-003.01A6a Exception to Reporting:

5-003.01A6a(i) Diversion: Any health care professional whose case disposition involves diversion is not required to report the diversion.

5-003.01A6b Optional Reporting:

5-003.01A6b(i) Pardon: Any health care professional who is pardoned for a conviction may report such pardon.

5-003.01A6b(ii) Set Aside: Any health care professional whose conviction is set aside may report such set aside.

5-003.01A6b(iii) Expunged: Any health care professional whose conviction records are expunged may report such expungement.

5-003.02 Reporting Persons Who Practice in the Same Profession as the Person Making the Report: Every health care professional must report when s/he has firsthand knowledge of facts giving him/her reason to believe that any person in the same profession as the person reporting has committed acts indicative of:

1. Gross incompetence;
2. A pattern of negligent conduct;
3. Unprofessional conduct;
4. Practice while that person's ability to practice may be impaired by alcohol, controlled substances, narcotic drugs, or physical, mental or emotional disability; or
5. Other violations of laws or regulations governing the practice of the profession.

For purpose of this regulation "person in the same profession" means a person who is regulated by the same Practice Act.

5-003.03 Reporting Persons Who Practice in a Different Profession Than the Person Making the Report: Every health care professional report when s/he has firsthand knowledge of facts giving him/her reason to believe that any person in a profession different than the person reporting:

1. Has committed acts indicative of gross incompetence; or
2. May be practicing while his/her ability to practice is impaired by alcohol, controlled substances, narcotic drugs, or physical, mental or emotional disability.

For purpose of this regulation "persons in a different profession," means a person who is regulated by a different Practice Act.

5-003.04 Information to Report When Reporting Persons in the Same or a Different Profession Than the Person Making the Report: Reports must be made on a form provided by the Department, a copy of which has been included and made part of these regulations as

Attachment 2; or reports may be made on a form constructed by the reporting party. This report must include the following information:

1. The act(s), omission(s) or conduct being reported;
2. When each act(s), omission(s) or conduct being reported occurred;
3. The statute(s) or regulation(s) believed to have been violated, if known;
4. Where each act(s), omission(s) or conduct being reported occurred;
5. A narrative description of the act(s), omission(s) or conduct being reported and the surrounding facts;
6. The names, titles, addresses and telephone numbers of all persons present, if known; and
7. The nature of any injury, damage, illness, loss or other detriment which resulted from the act(s), omission(s) or conduct.
8. The following information about the reporting individual or entity:
 - a. Name, address, and telephone number of the person or entity making the report;
 - b. Name, title, and telephone number of the responsible official submitting the report on behalf of an entity;
 - c. Relationship of the reporting person or entity to the health care professional who is the subject of the report.
9. The following information about the health care professional who is the subject of the report:
 - a. Name;
 - b. Home and work addresses and telephone numbers;
 - c. License Number; and
 - d. Date of birth.

5-003.04A Exceptions from Reporting

5-003.04A1 Treating Professionals: A health care professional who is providing treatment to another health care professional in a practitioner patient relationship is not required to report:

1. Information obtained or discovered in the course of treatment unless the treating professional determines that the condition of the person may be of such a nature which constitutes a danger to the public health and safety by the person's continued practice; or
2. Information based on confidential medical records protected by confidentiality provisions of the federal Public Health Services Act, 42 U.S.C. 290ee-3 and 290dd-3 and federal administrative rules and regulations, except as may be provided in such laws or regulations.

5-003.04A2 Licensee Assistance Program: Health care professionals are not required to report a person in the same or different profession of the person making the report for chemical impairment when the person being reported enters the Licensee Assistance Program as authorized by Neb. Rev. Stat. §71-172.01.

5-003.04A3 Spouses: A health care professional who is a spouse of another health care professional will not be required to report the spouse pursuant to 172 NAC 5-003.02 and 5-003.03.

5-003.05 Penalty for Failure to Report Yourself or Other Health Care Professionals: Health care professionals who fail to file reports required by 172 NAC 5-003.01, 5-003.02 and 5-003.03 are subject to discipline pursuant to Neb. Rev. Stat. §71-147 (20).

5-003.06 Immunity: Health care professionals except those self-reporting, that file reports under these regulations, as well as those who submit voluntary complaints, are immune from criminal or civil liability of any nature, whether direct or derivative, for filing reports or complaints with the Department or for disclosure of documents, records, or other information to the Department.

5-003.07 Confidentiality: The Department will treat reports made to it under these regulations against health care professionals as confidential, and the Department will process any and all such reports in the same manner as it processes complaints, and will maintain such information as part of the Department's investigative records as authorized by Neb. Rev. Stat. §71-168.01(7).

5-004 REPORTING BY HEALTH CARE FACILITIES, PEER REVIEW ORGANIZATIONS, AND PROFESSIONAL ASSOCIATIONS:

5-004.01 Health Care Facilities, Peer Review Organizations, and Professional Associations must Report to the Department any Facts Known to Them When :

1. A health care facility has:
 - a. Made payment due to adverse judgment, settlement, or award of a professional liability claim against the health care facility or a health care professional including settlements made prior to suit, arising out of the acts or omissions of the health care professional; or
 - b. Taken actions adversely affecting the privileges or membership of a health care professional due to alleged:
 1. Incompetence;
 2. Professional negligence;
 3. Unprofessional conduct; or
 4. Physical, mental or chemical impairment.
2. A peer review organization has taken action adversely affecting the privileges or membership of a health care professional that are indicative of alleged:
 - a. Professional negligence;
 - b. Incompetence;
 - c. Unprofessional conduct; or
 - d. Physical, mental or chemical impairment.
3. A professional association has taken action adversely affecting the membership of a health care professional in the association due to alleged:

- a. Incompetence;
- b. Professional negligence;
- c. Unprofessional conduct; or
- d. Physical, mental or chemical impairment.

5-004.02 Information to Report

5-004.02A Reporting Malpractice Payments or Adverse Action by a Health Care Facility:

1. The report must include the following information about the facility that makes the report:
 - a. Name, address, and telephone number of the person or entity making the report;
 - b. Name, title, and telephone number of the responsible official submitting the report on behalf of a facility;
 - c. Relationship of the reporting facility to the health care professional who is the subject of the report.
2. The report must include the following information about the health care professional who is the subject of the report:
 - a. Name;
 - b. Home and work addresses and telephone numbers;
 - c. License Number; and
 - d. Date of birth.
3. The name and address for the patient, client or other person to whom or for whose behalf payment was made;
4. When the action or claim has been filed with a court or other adjudicative body, identification of such court or body by name and address, and the case number;
5. The date of judgment, settlement, or award;
6. Amount paid, date of payment, and whether payment was made for judgment, settlement, or award; and
7. Description of any terms and conditions attached to the payment.
8. The reason(s) and a description of the facts surrounding the reasons for the payment made including:
 - a. The act(s) or omission(s) or conduct giving rise to the payment or adverse action;
 - b. Date or dates on which the act(s) or omission(s) occurred;
 - c. Where the act(s) or omission(s) occurred;
 - d. How the act(s) or omission(s) occurred;

- e. The name, title, address, and telephone number of all persons present at the time of each act or omission or with firsthand knowledge of the act or omission; and
- f. The nature of any injury, illness, damage or other loss or detriment upon which the action or claim was based.

5-004.02B Reporting Peer Review or Professional Association Adverse Actions

- 1. The report must include the following information about the individual or entity that makes the report:
 - a. Name, address, and telephone number of the person or entity making the report;
 - b. Name, title, and telephone number of the responsible official submitting the report on behalf of an entity; and
 - c. Relationship of the reporting person or entity to the health care professional who is the subject of the report.
- 2. All reports made under these regulations must contain the following information about the health care professional who is the subject of the report:
 - a. Name;
 - b. Home and work addresses and telephone numbers;
 - c. License Number; and
 - d. Date of birth.
- 3. Date action was taken and its effective date;
- 4. Duration of the effect of the action;
- 5. Type of action taken; and
- 6. Name and address for each patient, client or other person subject to the acts, omissions or other conduct giving rise to the action taken.
- 7. Reason(s) for the report and a description of the facts surrounding the reasons for the action taken including:
 - a. Act(s) or omission(s) or conduct giving rise to the payment or adverse action;
 - b. Date or dates on which the act(s) or omission(s) occurred;
 - c. Where the act(s) or omission(s) occurred;
 - d. How the act(s) or omission(s) occurred; and
 - e. Name, title, address, and telephone number of all persons present at the time of each act or omission or with firsthand knowledge of the act or omission.

5-004.03 Health Care Facility Peer Review Organizations or Professional Associations

5-004.03A Penalties for Failure to Report: By a Health Care Facility that fails to report as required by these regulations are subject to disciplinary action as authorized by Neb. Rev. Stat. §71- 448 (10).

5-004.03B Immunity: Health Care Facilities that file reports under these regulations, as well as those who submit voluntary complaints, are immune from criminal or civil liability of any nature, whether direct or derivative, for filing reports or complaints with the Department or for disclosure of documents, records or other information to the Department.

5-004.03C Confidentiality: The Department will treat reports made to it under these regulations against health care professionals as confidential; and the Department will process any and all such reports in the same manner as it processes complaints, and will maintain such information as part of the Department's investigative records as authorized by Neb. Rev. Stat. §71-168 (7).

5-004.04 Data Bank Reports: For purposes of Nebraska reporting requirements the Department will accept reports made by facilities, peer review organizations and professional associations under national practitioner data bank requirements of the Health Care Quality Improvement Act of 1986, as amended.

5-004.04A Nebraska Supplemental Report: In addition to National Practitioners Data Bank reports, facilities, peer review organizations, and professional associations must report to the Department information required by 172 NAC 5-004.02A or 5-004.02B that is not included on the data bank reports by using a form provided by the Department, a copy of which has been included and made a part of these regulations as Attachment 3; or reports may be made on a form constructed by the reporting party.

5-004.05 Other Reports: Facilities, peer review organizations, and professional associations reporting health care professionals not subject to the reporting requirements of the national practitioner data bank provisions of the Health Care Quality Improvement Act of 1986, as amended, must make reports to the Department using a form provided by the Department, a copy of which has been included and made a part of these regulations as Attachment 4; or reports may be made on a form constructed by the reporting party.

5-004.06 Exceptions to Reporting

5-004.06A Members: Persons who are members of committees established under Neb. Rev. Stat. §25-12,123 (Peer Review Committee) and §71-2046 to §71-2048 (Medical Staff Committee or Utilization Review Committee) are not required to report such activities.

5-004.06B Witnesses: Witnesses who appear before committees established under Neb. Rev. Stat. §25-12,123 (Peer Review Committee) and §71-2046 to §71-2048 (Medical Staff Committee or Utilization Review Committee) are not required to report such activities. However, any person who is such a witness is not excused from reporting matters of firsthand knowledge that would otherwise be reportable under these regulations only because s/he attended or testified before such a committee.

5-005 REPORTING BY INSURERS: Insurers doing business in Nebraska must report to the Department no later than 30 days after the date of any of the following acts or event:

1. The insurer has made payment due to an adverse judgment, settlement, or award including settlement made prior to suit, resulting from a professional liability claim arising out of the acts or omissions of the practitioner.
2. The insurer has taken an adverse action that affects the coverage provided by the insurer to a health care professional due to alleged incompetence, negligence, unethical or unprofessional conduct, or physical, mental, or chemical impairment.
3. The insurer has reasonable grounds to believe that a practitioner has committed a violation of the regulatory provisions governing the profession of the practitioner; or
4. The Department has requested the insurer to provide information.

5-005.01 Information to Report

1. Insurers must report the information required by this section to the Department on a form provided by the Department, a copy of which has been included and made a part of these regulations as Attachment 5; or reports may be made on a form constructed by the reporting party.
2. Any facts known to the insurer, including the identity of the practitioner and patient(s) (if any), about the:
 - a. Acts or omissions that resulted in the professional liability claim payment;
 - b. Acts or omissions that lead to adverse action affecting the practitioner's coverage;
 - c. Acts or omissions indicative of a violation of regulatory provisions governing the profession of the practitioner being reported; or
 - d. Information requested by the Department.
3. Insurers who report practitioners under the requirements of the National Practitioner Data Bank authorized by the Health Care Quality Improvement Act of 1986, as amended, must:
 - a. File a copy of the data bank report with the Department; and
 - b. Attach the Nebraska Supplemental Report, a copy of which is Attachment 3, and is incorporated in these regulations, or reports may be made on a form constructed by the reporting party, to the National Practitioner Data Report.

5-005.02 Exceptions to Reporting: An insurer is not required to report when:

1. The information is based on confidential medical records protected by the confidentiality provisions of the federal Public Health Services Act U.S.C. 290dd-2, and federal administration rules and regulations.
2. A practitioner's professional liability coverage rate is increased but any such increase is not based on grounds that would be reportable under these regulations.
3. The information is gained by the filing by or on behalf of a health care professional of a claim for payment under his/her health insurance policy.

5-005.03 Penalty for Failure to Report: Any insurer who fails or neglects to make a report to or provide information as requested by the Department within a reasonable time is guilty of a Class IV misdemeanor, unless such insurer has reported the required facts to a law enforcement agency.

5-005.04 Immunity from Liability for Insurer Reporting: Any insurer or employee of an insurer who makes a report as required by these regulations is immune from criminal penalty of any kind or from civil liability or other penalty for slander, libel, defamation, breach of the privilege between patient and physician or between client and professional counselor, or violation of the laws of the State of Nebraska relating to the business or insurance that may be incurred or imposed on account of or in connection with the making of such report.

EFFECTIVE DATE
OCTOBER 9, 2006

NEBRASKA HEALTH AND HUMAN SERVICES
REGULATION AND LICENSURE

172 NAC 5

5-005.05 Confidentiality: The Department will treat reports from insurers that contain or relate to privileged communications between patient and practitioner as privileged communications and will maintain such information as part of the Department's investigative records. Such reports may not be obtained by legal discovery proceedings or otherwise disclosed unless the privilege is waived by the patient involved or the reports are made part of the record in a contested case under Neb. Rev. Stat. §71-154, in which case such reports will only be disclosed to the extent they are made part of such record.

Approved by the Attorney General on September 20, 2006

Approved by the Governor on October 4, 2006

Filed with the Secretary of State on October 4, 2006

Effective Date: October 9, 2006

Reporting Forms referred to as Attachments 1 through 5 may be obtained by contacting Health and Human Services Regulation and Licensure:

Investigations Division

P.O. Box 95164

Lincoln, NE 68509-5164

(402) 471-0175

Website: <http://dhhs.ne.gov/pages/Investigations.aspx>

To place a complaint, you may call: Investigations Division (402) 471-0175