

2019

STATE OF NEBRASKA

**STATUTES RELATING TO
UNIFORM CREDENTIALING ACT
AND
HEALTH CARE QUALITY IMPROVEMENT ACT
NEBRASKA REGULATION OF HEALTH PROFESSIONS ACT
VERIFICATION OF LAWFUL PRESENCE**

NEBRASKA

Good Life. Great Mission.

DEPT. OF HEALTH AND HUMAN SERVICES

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UNIFORM CREDENTIALING ACT

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- 71-110. Transferred to section 38-142.
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- 71-1,202. Transferred to section 38-1,134.
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NEBRASKA REGULATION OF HEALTH PROFESSIONS ACT

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STATUTES PERTAINING TO UNIFORM CREDENTIALING ACT

38-101. Act, how cited.

Sections 38-101 to 38-1,145 and the following practice acts shall be known and may be cited as the Uniform Credentialing Act:

- (1) The Advanced Practice Registered Nurse Practice Act;
- (2) The Alcohol and Drug Counseling Practice Act;
- (3) The Athletic Training Practice Act;
- (4) The Audiology and Speech-Language Pathology Practice Act;
- (5) The Certified Nurse Midwifery Practice Act;
- (6) The Certified Registered Nurse Anesthetist Practice Act;
- (7) The Chiropractic Practice Act;
- (8) The Clinical Nurse Specialist Practice Act;
- (9) The Cosmetology, Electrology, Esthetics, Nail Technology, and Body Art Practice Act;
- (10) The Dentistry Practice Act;
- (11) The Dialysis Patient Care Technician Registration Act;
- (12) The Emergency Medical Services Practice Act;
- (13) The Environmental Health Specialists Practice Act;
- (14) The Funeral Directing and Embalming Practice Act;
- (15) The Genetic Counseling Practice Act;
- (16) The Hearing Instrument Specialists Practice Act;
- (17) The Licensed Practical Nurse-Certified Practice Act until November 1, 2017;
- (18) The Massage Therapy Practice Act;
- (19) The Medical Nutrition Therapy Practice Act;
- (20) The Medical Radiography Practice Act;
- (21) The Medicine and Surgery Practice Act;
- (22) The Mental Health Practice Act;
- (23) The Nurse Practice Act;
- (24) The Nurse Practitioner Practice Act;
- (25) The Nursing Home Administrator Practice Act;
- (26) The Occupational Therapy Practice Act;
- (27) The Optometry Practice Act;
- (28) The Perfusion Practice Act;
- (29) The Pharmacy Practice Act;
- (30) The Physical Therapy Practice Act;
- (31) The Podiatry Practice Act;
- (32) The Psychology Practice Act;
- (33) The Respiratory Care Practice Act;
- (34) The Surgical First Assistant Practice Act;
- (35) The Veterinary Medicine and Surgery Practice Act; and
- (36) The Water Well Standards and Contractors' Practice Act.

If there is any conflict between any provision of sections 38-101 to 38-1,145 and any provision of a practice act, the provision of the practice act shall prevail.

The Revisor of Statutes shall assign the Uniform Credentialing Act, including the practice acts enumerated in subdivisions (1) through (35) of this section, to articles within Chapter 38.

Source: Laws 1927, c. 167, § 1, p. 454; C.S.1929, § 71-101; R.S.1943, § 71-101; Laws 1972, LB 1067, § 1; Laws 1984, LB 481, § 5; Laws 1986, LB 277, § 2; Laws 1986, LB 286, § 23; Laws 1986, LB 355, § 8; Laws 1986, LB 579, § 15; Laws 1986, LB 926, § 1; Laws 1987, LB 473, § 3; Laws 1988, LB 557, § 12; Laws 1988, LB 1100, § 4; Laws 1989, LB 323, § 2; Laws 1989, LB 344, § 4; Laws 1991, LB 456, § 4; Laws 1993, LB 48, § 1; Laws 1993, LB 187, § 3; Laws 1993, LB 429, § 1; Laws 1993, LB 536, § 43; Laws 1993, LB 669, § 2; Laws 1994, LB 900, § 1; Laws 1994, LB 1210, § 9; Laws 1994, LB 1223, § 2; Laws 1995, LB 406, § 10; Laws 1996, LB 1044, § 371; Laws 1997, LB 622, § 77; Laws 1999, LB 178, § 1; Laws 1999, LB 366, § 7; Laws 1999, LB 828, § 7; Laws 2001, LB 25, § 1; Laws 2001, LB 209, § 1; Laws 2001, LB 270, § 1; Laws 2001, LB 398, § 19; Laws 2002, LB 1021, § 4; Laws 2002, LB 1062, § 11; Laws 2003, LB 242, § 13; Laws 2004, LB 1005, § 8; Laws 2004, LB 1083, § 103; Laws 2005, LB 306, § 1; Laws 2006, LB 994, § 79; R.S.Supp.,2006, § 71-101; Laws 2007, LB236, § 1; Laws 2007, LB247, § 23; Laws 2007, LB247, § 58; Laws 2007, LB296, § 296; Laws 2007, LB463, § 1; Laws 2007, LB481, § 1; Laws 2008, LB928, § 2; Laws 2009, LB195, § 5; Laws 2012, LB831, § 26; Laws 2015, LB264, § 1; Laws 2016, LB721, § 18; Laws 2016, LB750, § 1; Laws 2017, LB88, § 28; Laws 2017, LB255, § 8; Laws 2017, LB417, § 3; Laws 2018, LB701, § 1; Laws 2019, LB29, § 1; Laws 2019, LB112, § 1; Laws 2019, LB556, § 1.

Note: The Revisor of Statutes has pursuant to section 49-769 correlated LB29, section 1, with LB112, section 1, and LB556, section 1, to reflect all amendments.

Note: Changes made by LB556 became effective May 2, 2019. Changes made by LB29 became effective September 1, 2019. Changes made by LB112 became operative January 1, 2020.

Cross References

- **Advanced Practice Registered Nurse Practice Act**, see section 38-201.
- **Alcohol and Drug Counseling Practice Act**, see section 38-301.
- **Athletic Training Practice Act**, see section 38-401.
- **Audiology and Speech-Language Pathology Practice Act**, see section 38-501.
- **Certified Nurse Midwifery Practice Act**, see section 38-601.
- **Certified Registered Nurse Anesthetist Practice Act**, see section 38-701.
- **Chiropractic Practice Act**, see section 38-801.
- **Clinical Nurse Specialist Practice Act**, see section 38-901.
- **Cosmetology, Electrology, Esthetics, Nail Technology, and Body Art Practice Act**, see section 38-1001.
- **Dentistry Practice Act**, see section 38-1101.
- **Dialysis Patient Care Technician Registration Act**, see section 38-3701.
- **Emergency Medical Services Practice Act**, see section 38-1201.
- **Environmental Health Specialists Practice Act**, see section 38-1301.
- **Funeral Directing and Embalming Practice Act**, see section 38-1401.
- **Genetic Counseling Practice Act**, see section 38-3401.
- **Hearing Instrument Specialists Practice Act**, see section 38-1501.
- **Licensed Practical Nurse-Certified Practice Act**, see section 38-1601.
- **Massage Therapy Practice Act**, see section 38-1701.
- **Medical Nutrition Therapy Practice Act**, see section 38-1801.
- **Medical Radiography Practice Act**, see section 38-1901.
- **Medicine and Surgery Practice Act**, see section 38-2001.
- **Mental Health Practice Act**, see section 38-2101.
- **Nurse Practice Act**, see section 38-2201.
- **Nurse Practitioner Practice Act**, see section 38-2301.
- **Nursing Home Administrator Practice Act**, see section 38-2401.
- **Occupational Therapy Practice Act**, see section 38-2501.
- **Optometry Practice Act**, see section 38-2601.
- **Perfusion Practice Act**, see section 38-2701.
- **Pharmacy Practice Act**, see section 38-2801.
- **Physical Therapy Practice Act**, see section 38-2901.
- **Podiatry Practice Act**, see section 38-3001.
- **Psychology Practice Act**, see section 38-3101.
- **Respiratory Care Practice Act**, see section 38-3201.
- **Surgical First Assistant Practice Act**, see section 38-3501.
- **Veterinary Medicine and Surgery Practice Act**, see section 38-3301.
- **Water Well Standards and Contractors' Practice Act**, see section 46-1201.

38-102. Legislative findings.

The Legislature recognizes the need for regulation of persons and businesses providing health and health-related services and environmental services. It is the intent of the Legislature to provide for such regulation through the Uniform Credentialing Act.

Source: Laws 2007, LB463, § 2.

38-103. Purposes of act.

The purposes of the Uniform Credentialing Act are (1) to protect the public health, safety, and welfare by (a) providing for the credentialing of persons and businesses that provide health and health-related services and environmental services which are made subject to the act and (b) the development, establishment, and enforcement of standards for such services and (2) to provide for the efficient, adequate, and safe practice of such persons and businesses.

Source: Laws 2007, LB463, § 3.

38-104. Existing rules, regulations, licenses, certificates, and legal and administrative proceedings; how treated.

(1) All rules and regulations adopted prior to December 1, 2008, under the Uniform Licensing Law or other statutes amended or repealed by Laws 2007, LB 463, shall continue to be effective under the Uniform Credentialing Act to the extent not in conflict with the act.

(2) All licenses, certificates, registrations, permits, seals, practice agreements, or other forms of approval issued prior to December 1, 2008, in accordance with the Uniform Licensing Law or other statutes amended or repealed by Laws 2007, LB 463, shall remain valid as issued for purposes of the Uniform Credentialing Act unless revoked or otherwise terminated by law.

(3) Any suit, action, or other proceeding, judicial or administrative, which was lawfully commenced prior to December 1, 2008, under the Uniform Licensing Law or other statutes amended or repealed by Laws 2007, LB 463, shall be subject to the provisions of the Uniform Licensing Law or such other statutes as they existed prior to December 1, 2008.

Source: Laws 2007, LB463, § 4.

38-105. Definitions, where found.

For purposes of the Uniform Credentialing Act, unless the context otherwise requires, the definitions found in sections 38-106 to 38-120.03 apply.

Source: Laws 2007, LB463, § 5; Laws 2017, LB88, § 29; Laws 2018, LB701, § 2; Laws 2019, LB112, § 2.

Operative Date: January 1, 2020

38-106. Active addiction, defined.

Active addiction means current physical or psychological dependence on alcohol or a substance, which dependence develops following the use of alcohol or a substance on a periodic or continuing basis.

Source: Laws 2007, LB463, § 6.

38-107. Alcohol or substance abuse, defined.

Alcohol or substance abuse means a maladaptive pattern of alcohol or substance use leading to clinically significant impairment or distress as manifested by one or more of the following occurring at any time during the same twelve-month period:

(1) Recurrent alcohol or substance use resulting in a failure to fulfill major role obligations at work, school, or home;

(2) Recurrent alcohol or substance use in situations in which it is physically hazardous;

(3) Recurrent legal problems related to alcohol or substance use; or

(4) Continued alcohol or substance use despite having persistent or recurrent social or interpersonal problems caused or exacerbated by the effects of the alcohol or substance use.

Source: Laws 2007, LB463, § 7.

38-108. Board, defined; no board established by statute; effect.

Board means one of the boards appointed by the State Board of Health pursuant to section 38-158 or appointed by the Governor pursuant to the Emergency Medical Services Practice Act or the Water Well Standards and Contractors' Practice Act. For professions for which there is no board established by statute, the duties normally carried out by a board are the responsibility of the department.

Source: Laws 2007, LB463, § 8.

Cross References

- **Emergency Medical Services Practice Act**, see section 38-1201.

- **Water Well Standards and Contractors' Practice Act**, see section 46-1201.

38-109. Business, defined.

Business means a person engaged in providing services listed in subsection (3) of section 38-121.

Source: Laws 2007, LB463, § 9.

38-110. Certificate, defined.

Certificate means an authorization issued by the department that gives a person the right to use a protected title that only a person who has met specific requirements may use.

Source: Laws 2007, LB463, § 10.

38-111. Consumer, defined.

Consumer means a person receiving health or health-related services or environmental services and includes a patient, client, resident, customer, or person with a similar designation.

Source: Laws 2007, LB463, § 11.

38-112. Course of study, defined.

Course of study means a program of instruction necessary to obtain a credential meeting the requirements set out for each profession in the appropriate practice act and rules and regulations and includes a college, a professional school, a vocational school, hours of training, or a program of instruction with a similar designation.

Source: Laws 2007, LB463, § 12.

38-113. Credential, defined.

Credential means a license, certificate, or registration.

Source: Laws 2007, LB463, § 13.

38-114. Department, defined.

Department means the Division of Public Health of the Department of Health and Human Services.

Source: Laws 2007, LB463, § 14.

38-115. Dependence, defined.

Dependence means a maladaptive pattern of alcohol or substance use, leading to clinically significant impairment or distress, as manifested by three or more of the following occurring at any time in the same twelve-month period:

(1) Tolerance as defined by either of the following:

- (a) A need for markedly increased amounts of alcohol or the substance to achieve intoxication or desired effect; or
- (b) A markedly diminished effect with continued use of the same amount of alcohol or the substance;

(2) Withdrawal as manifested by either of the following:

- (a) The characteristic withdrawal syndrome for alcohol or the substance as referred to in the Diagnostic and Statistical Manual of Mental Disorders — Fourth Edition, published by the American Psychiatric Association; or
- (b) Alcohol or the same substance or a closely related substance is taken to relieve or avoid withdrawal symptoms;
- (3) Alcohol or the substance is often taken in larger amounts or over a longer period than was intended;
- (4) A persistent desire or unsuccessful efforts to cut down or control alcohol or substance use;
- (5) A great deal of time is spent in activities necessary to obtain alcohol or the substance, to use alcohol or the substance, or to recover from the effects of use of alcohol or the substance;
- (6) Important social, occupational, or recreational activities are given up or reduced because of alcohol or substance use; or
- (7) Alcohol or substance use continues despite knowledge of having had a persistent or recurrent physical or psychological problem that was likely to have been caused or exacerbated by alcohol or the substance.

Source: Laws 2007, LB463, § 15.

38-116. Director, defined.

Director means the Director of Public Health of the Division of Public Health or his or her designee.

Source: Laws 2007, LB463, § 16.

38-117. Inactive credential, defined.

Inactive credential means a credential which the credential holder has voluntarily placed on inactive status and by which action has terminated the right to practice or represent himself or herself as having an active credential.

Source: Laws 2007, LB463, § 17.

38-117.01. Low-income individual, defined.

Low-income individual means an individual enrolled in a state or federal public assistance program, including, but not limited to, the medical assistance program established pursuant to the Medical Assistance Act, the federal Supplemental Nutrition Assistance Program, or the federal Temporary Assistance for Needy Families program, or whose household adjusted gross income is below one hundred thirty percent of the federal income poverty guideline or a higher threshold to be set by the Licensure Unit of the Division of Public Health of the Department of Health and Human Services.

Source: Laws 2019, LB112, § 3.

Operative Date: January 1, 2020

Cross References

- **Medical Assistance Act**, see section 68-901.

38-117.02. Military families, defined.

Military families means active duty service members in the armed services of the United States, military spouses, honorably discharged veterans of the armed services of the United States, spouses of such honorably discharged veterans, and unremarried surviving spouses of deceased service members of the armed services of the United States.

Source: Laws 2019, LB112, § 4.

Operative Date: January 1, 2020

38-118. License, defined.

License means an authorization issued by the department to an individual to engage in a profession or to a business to provide services which would otherwise be unlawful in this state in the absence of such authorization.

Source: Laws 2007, LB463, § 18.

38-118.01. Military spouse, defined.

Military spouse means the spouse of an active duty service member in the armed forces of the United States.

Source: Laws 2017, LB88, § 30; Laws 2019, LB112, § 5.

Operative Date: January 1, 2020

38-119. Profession, defined.

Profession means any profession or occupation named in subsection (1) or (2) of section 38-121.

Source: Laws 2007, LB463, § 19.

38-120. Registry, defined.

Registry means a list of persons who offer a specified service or activity.

Source: Laws 2007, LB463, § 20.

38-120.01. Telehealth, defined.

Telehealth means the use of medical information electronically exchanged from one site to another, whether synchronously or asynchronously, to aid a credential holder in the diagnosis or treatment of a patient. Telehealth includes services originating from a patient's home or any other location where such patient is located, asynchronous services involving the acquisition and storage of medical information at one site that is then forwarded to or retrieved by a credential holder at another site for medical evaluation, and telemonitoring.

Source: Laws 2018, LB701, § 3.

38-120.02. Telemonitoring, defined.

Telemonitoring means the remote monitoring of a patient's vital signs, biometric data, or subjective data by a monitoring device which transmits such data electronically to a credential holder for analysis and storage.

Source: Laws 2018, LB701, § 4.

38-120.03. Young worker, defined.

Young worker means (1) for an initial credential under the Cosmetology, Electrology, Esthetics, Nail Technology, and Body Art Practice Act, except for a body art license, an applicant who is between the ages of seventeen and twenty-five years or (2) for an initial credential issued under any other provision of the Uniform Credentialing Act, including a body art license, an applicant who is between the ages of eighteen and twenty-five years.

Source: Laws 2019, LB112, § 6.

Operative Date: January 1, 2020

Cross References

- **Cosmetology, Electrology, Esthetics, Nail Technology, and Body Art Practice Act**, see section 38-1001.

38-121. Practices; credential required.

(1) No individual shall engage in the following practices unless such individual has obtained a credential under the Uniform Credentialing Act:

- (a) Acupuncture;
- (b) Advanced practice nursing;
- (c) Alcohol and drug counseling;
- (d) Asbestos abatement, inspection, project design, and training;
- (e) Athletic training;
- (f) Audiology;
- (g) Speech-language pathology;
- (h) Body art;
- (i) Chiropractic;
- (j) Cosmetology;
- (k) Dentistry;
- (l) Dental hygiene;
- (m) Electrology;
- (n) Emergency medical services;
- (o) Esthetics;
- (p) Funeral directing and embalming;
- (q) Genetic counseling;
- (r) Hearing instrument dispensing and fitting;
- (s) Lead-based paint abatement, inspection, project design, and training;
- (t) Licensed practical nurse-certified until November 1, 2017;
- (u) Massage therapy;
- (v) Medical nutrition therapy;
- (w) Medical radiography;
- (x) Medicine and surgery;
- (y) Mental health practice;
- (z) Nail technology;
- (aa) Nursing;
- (bb) Nursing home administration;
- (cc) Occupational therapy;
- (dd) Optometry;
- (ee) Osteopathy;
- (ff) Perfusion;
- (gg) Pharmacy;
- (hh) Physical therapy;
- (ii) Podiatry;
- (jj) Psychology;
- (kk) Radon detection, measurement, and mitigation;
- (ll) Respiratory care;
- (mm) Surgical assisting;
- (nn) Veterinary medicine and surgery;
- (oo) Public water system operation; and
- (pp) Constructing or decommissioning water wells and installing water well pumps and pumping equipment.

(2) No individual shall hold himself or herself out as any of the following until such individual has obtained a credential under the Uniform Credentialing Act for that purpose:

- (a) Registered environmental health specialist;
- (b) Certified marriage and family therapist;
- (c) Certified professional counselor;
- (d) Social worker; or
- (e) Dialysis patient care technician.

(3) No business shall operate for the provision of any of the following services unless such business has obtained a credential under the Uniform Credentialing Act:

- (a) Body art;
- (b) Cosmetology;

- (c) Emergency medical services;
- (d) Esthetics;
- (e) Funeral directing and embalming;
- (f) Massage therapy; or
- (g) Nail technology.

Source: Laws 1927, c. 167, § 2, p. 455; C.S.1929, § 71-201; Laws 1935, c. 142, § 27, p. 529; C.S.Supp.,1941, § 71-201; R.S.1943, § 71-102; Laws 1957, c. 298, § 5, p. 1076; Laws 1961, c. 337, § 3, p. 1051; Laws 1971, LB 587, § 1; Laws 1978, LB 406, § 1; Laws 1980, LB 94, § 2; Laws 1984, LB 481, § 6; Laws 1985, LB 129, § 1; Laws 1986, LB 277, § 3; Laws 1986, LB 286, § 24; Laws 1986, LB 355, § 9; Laws 1986, LB 579, § 16; Laws 1988, LB 557, § 13; Laws 1988, LB 1100, § 5; Laws 1989, LB 342, § 4; Laws 1993, LB 669, § 3; Laws 1995, LB 406, § 11; Laws 1996, LB 1044, § 372; Laws 2001, LB 270, § 2; Laws 2004, LB 1083, § 104; R.S.Supp.,2006, § 71-102; Laws 2007, LB236, § 2; Laws 2007, LB247, § 59; Laws 2007, LB296, § 297; Laws 2007, LB463, § 21; Laws 2009, LB195, § 6; Laws 2012, LB831, § 27; Laws 2016, LB721, § 19; Laws 2017, LB88, § 31; Laws 2017, LB255, § 9.

Annotations

- The practice of operative surgery in its commonly accepted meaning requires a license to practice medicine and surgery. *State ex rel. Johnson v. Wagner*, 139 Neb. 471, 297 N.W. 906 (1941).
- Former statute regulating the practice of medicine was not void as discriminatory because it did not provide for examination of all persons desiring to treat patients by drugless or other methods of healing. *Carpenter v. State*, 106 Neb. 742, 184 N.W. 941 (1921).
- One who had no license to practice dentistry could not maintain an action in equity to enjoin the state board from interfering with such practice. *Patterson v. Morehead*, 100 Neb. 760, 161 N.W. 273 (1917).
- A corporation cannot be licensed to practice medicine but licensed physicians may form a corporation and make contracts for services of members. *State Electro-Medical Institute v. State*, 74 Neb. 40, 103 N.W. 1078 (1905).
- Under former statute, the practice of osteopathy without license as a physician was unlawful. *Little v. State*, 60 Neb. 749, 84 N.W. 248 (1900), 51 L.R.A. 717 (1900).
- Statute requiring a license to practice the professions enumerated in this section does not contravene Article 3, section 14, of the Constitution of Nebraska providing that no bill shall contain more than one subject to be clearly expressed in the title. *Peet Stock Remedy Co. v. McMullen*, 32 F.2d 669 (8th Cir. 1929).

38-122. Credential; form.

Every initial credential to practice a profession or engage in a business shall be in the form of a document under the name of the department.

Source: Laws 1927, c. 167, § 5, p. 455; C.S.1929, § 71-204; R.S.1943, § 71-105; Laws 1994, LB 1210, § 12; Laws 1996, LB 1044, § 374; Laws 1999, LB 828, § 9; R.S.1943, (2003), § 71-105; Laws 2007, LB296, § 299; Laws 2007, LB463, § 22; Laws 2018, LB1034, § 4.

38-123. Record of credentials issued under act; department; duties; contents.

(1) The department shall establish and maintain a record of all credentials issued pursuant to the Uniform Credentialing Act. The record shall contain identifying information for each credential holder and the credential issued pursuant to the act.

(2) For individual credential holders engaged in a profession:

(a) The record information shall include:

- (i) The name, date and place of birth, and social security number;
 - (ii) The street, rural route, or post office address;
 - (iii) The school and date of graduation;
 - (iv) The name of examination, date of examination, and ratings or grades received, if any;
 - (v) The type of credential issued, the date the credential was issued, the identifying name and number assigned to the credential, and the basis on which the credential was issued;
 - (vi) The status of the credential; and
 - (vii) A description of any disciplinary action against the credential, including, but not limited to, the type of disciplinary action, the effective date of the disciplinary action, and a description of the basis for any such disciplinary action;
- (b) The record may contain any additional information the department deems appropriate to advance or support the purpose of the Uniform Credentialing Act;
- (c) The record may be maintained in computer files or paper copies and may be stored on microfilm or in similar form; and

(d) The record is a public record, except that social security numbers shall not be public information but may be shared as specified in subsection (5) of section 38-130.

(3) For credential holders engaged in a business:

- (a) The record information shall include:
 - (i) The full name and address of the business;
 - (ii) The type of credential issued, the date the credential was issued, the identifying name and number assigned to the credential, and the basis on which the credential was issued;
 - (iii) The status of the credential; and
 - (iv) A description of any disciplinary action against the credential, including, but not limited to, the type of disciplinary action, the effective date of the disciplinary action, and a description of the basis for any such disciplinary action;
 - (b) The record may contain any additional information the department deems appropriate to advance or support the purpose of the Uniform Credentialing Act;
 - (c) The record may be maintained in computer files or paper copies and may be stored on microfilm or in similar form; and
 - (d) The record is a public record.
- (4) Except as otherwise specifically provided, if the department is required to provide notice or notify an applicant or credential holder under the Uniform Credentialing Act, such requirements shall be satisfied by sending a notice to such applicant or credential holder at his or her last address of record.

Source: Laws 2007, LB463, § 23; Laws 2017, LB417, § 4.

38-124. Credential holder's advertisement; contents; credential; availability; identity of profession or business.

(1) Any credential holder's advertisement for health care services shall identify the type of credential or credentials held by the credential holder pursuant to the definitions, titles, and abbreviations authorized under the practice act applicable to his or her credential or credentials or the examination designations required for a credential under the practice act applicable to his or her credential or credentials. The advertisement shall not include deceptive or misleading information and shall not include any affirmative communication or representation that misstates, falsely describes, or falsely represents the skills, training, expertise, education, board certification, or credential or credentials of the credential holder.

(2) Every person credentialed under the Uniform Credentialing Act shall make his or her current credential available upon request. The department, with the recommendation of the appropriate board, if any, shall determine how a consumer will be able to identify a credential holder. The method of identification shall be clear and easily accessed and used by the consumer. All signs, announcements, stationery, and advertisements of persons credentialed under the act shall identify the profession or business for which the credential is held.

Source: Laws 1927, c. 167, § 7, p. 456; C.S.1929, § 71-206; Laws 1935, c. 142, § 28, p. 529; C.S.Supp.,1941, § 71-206; Laws 1943, c. 150, § 2, p. 539; R.S.1943, § 71-107; Laws 1957, c. 298, § 6, p. 1076; Laws 1961, c. 337, § 4, p. 1051; Laws 1978, LB 406, § 2; Laws 1985, LB 129, § 2; Laws 1986, LB 286, § 28; Laws 1986, LB 579, § 20; Laws 1988, LB 557, § 14; Laws 1988, LB 1100, § 6; Laws 1989, LB 342, § 5; Laws 1993, LB 669, § 4; Laws 1994, LB 1210, § 14; Laws 1995, LB 406, § 12; Laws 1999, LB 828, § 10; Laws 2004, LB 1083, § 105; R.S.Supp.,2006, § 71-107; Laws 2007, LB236, § 3; Laws 2007, LB463, § 24; Laws 2015, LB452, § 1.

38-125. Certification and verification of credentials.

(1) Upon request and payment of the required fee, the department shall provide certification of a credential which shall include a certified statement that provides information regarding the basis on which a credential was issued, the date of issuance, and whether disciplinary action has been taken against the credential.

(2) Upon request and payment of the required fee, the department shall provide verification of a credential which shall include written confirmation as to whether a credential is valid at the time the request is made.

Source: Laws 1927, c. 167, § 44, p. 465; C.S.1929, § 71-506; R.S.1943, § 71-145; Laws 1986, LB 286, § 44; Laws 1986, LB 579, § 36; Laws 1994, LB 1210, § 24; Laws 1996, LB 1044, § 381; Laws 2003, LB 242, § 19; R.S.1943, (2003), § 71-145; Laws 2007, LB463, § 25.

38-126. Rules and regulations; board and department; adopt.

To protect the health, safety, and welfare of the public and to insure to the greatest extent possible the efficient, adequate, and safe practice of health services, health-related services, and environmental services:

(1)(a) The appropriate board may adopt rules and regulations to:

- (i) Specify minimum standards required for a credential, including education, experience, and eligibility for taking the credentialing examination, specify methods to meet the minimum standards through military service as provided in section 38-1,141, and on or before December 15, 2017, specify standards and procedures for issuance of temporary credentials for military spouses as provided in section 38-129.01;

- (ii) Designate credentialing examinations, specify the passing score on credentialing examinations, and specify standards, if any, for accepting examination results from other jurisdictions;

- (iii) Set continuing competency requirements in conformance with section 38-145;

- (iv) Set standards for waiver of continuing competency requirements in conformance with section 38-146;
 - (v) Set standards for courses of study; and
 - (vi) Specify acts in addition to those set out in section 38-179 that constitute unprofessional conduct; and
 - (b) The department shall promulgate and enforce such rules and regulations;
 - (2) For professions or businesses that do not have a board created by statute:
 - (a) The department may adopt, promulgate, and enforce such rules and regulations; and
 - (b) The department shall carry out any statutory powers and duties of the board;
 - (3) The department, with the recommendation of the appropriate board, if any, may adopt, promulgate, and enforce rules and regulations for the respective profession, other than those specified in subdivision (1) of this section, to carry out the Uniform Credentialing Act; and
 - (4) The department may adopt, promulgate, and enforce rules and regulations with general applicability to carry out the Uniform Credentialing Act.
- Source:** Laws 1927, c. 167, § 68, p. 472; C.S.1929, § 71-902; R.S.1943, § 71-169; Laws 1996, LB 1044, § 401; R.S.1943, (2003), § 71-169; Laws 2007, LB296, § 321; Laws 2007, LB463, § 26; Laws 2015, LB264, § 2; Laws 2017, LB88, § 32.

38-127. Statutes, rules, and regulations; availability; duty of department.

The department shall have available for each profession and business regulated under the Uniform Credentialing Act the applicable statutes, rules, and regulations relative to the credentials for the appropriate profession or business.

Source: Laws 1927, c. 167, § 69, p. 472; C.S.1929, § 71-903; R.S.1943, § 71-170; Laws 1986, LB 286, § 75; Laws 1986, LB 579, § 67; Laws 1994, LB 1210, § 51; Laws 1996, LB 1044, § 402; Laws 1999, LB 828, § 57; R.S.1943, (2003), § 71-170; Laws 2007, LB463, § 27.

38-128. Legislative intent; department review of credentialed professions and businesses.

(1) It is the intent of the Legislature that quality health care services and human services be provided to the public 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 and business to determine if continued credentialing is needed to protect the public.

Source: Laws 1999, LB 828, § 8; R.S.1943, (2003), § 71-1,343; Laws 2007, LB463, § 28.

38-129. Issuance of credential; qualifications.

(1) No individual shall be issued a credential under the Uniform Credentialing Act until he or she has furnished satisfactory evidence to the department that he or she is of good character and has attained the age of nineteen years except as otherwise specifically provided by statute, rule, or regulation.

(2) A credential may only be issued to (a) a citizen of the United States, (b) an alien lawfully admitted into the United States who is eligible for a credential under the Uniform Credentialing Act, (c) a nonimmigrant lawfully present in the United States who is eligible for a credential under the Uniform Credentialing Act, or (d) a person who submits (i) an unexpired employment authorization document issued by the United States Department of Homeland Security, Form I-766, and (ii) documentation issued by the United States Department of Homeland Security, the United States Citizenship and Immigration Services, or any other federal agency, such as one of the types of Form I-797 used by the United States Citizenship and Immigration Services, demonstrating that such person is described in section 202(c)(2)(B)(i) through (ix) of the federal REAL ID Act of 2005, Public Law 109-13. Such credential shall be valid only for the period of time during which such person's employment authorization document is valid.

Source: Laws 1927, c. 167, § 3, p. 455; C.S.1929, § 71-202; R.S.1943, § 71-103; Laws 1969, c. 560, § 1, p. 2278; Laws 1974, LB 811, § 6; Laws 1986, LB 286, § 25; Laws 1986, LB 579, § 17; Laws 1986, LB 926, § 2; Laws 1994, LB 1210, § 10; R.S.1943, (2003), § 71-103; Laws 2007, LB463, § 29; Laws 2011, LB225, § 1; Laws 2016, LB947, § 3.

38-129.01. Temporary credential to military spouse; issuance; period valid.

(1) The department, with the recommendation of the appropriate board, shall issue a temporary credential to a military spouse who complies with and meets the requirements of this section pending issuance of the applicable credential under the Uniform Credentialing Act. This section shall not apply to a license to practice dentistry, including a temporary license under section 38-1123.

(2) A military spouse shall submit the following with his or her application for the applicable credential:

- (a) A copy of his or her military dependent identification card which identifies him or her as the spouse of an active duty member of the United States Armed Forces;
- (b) A copy of his or her spouse's military orders reflecting an active-duty assignment in Nebraska;

(c) A copy of his or her credential from another jurisdiction and the applicable statutes, rules, and regulations governing the credential; and

(d) A copy of his or her fingerprints for a criminal background check if required under section 38-131.

(3) If the department, with the recommendation of the appropriate board, determines that the applicant is a resident of Nebraska, is the spouse of an active duty member of the United States Armed Forces who is assigned to a duty station in Nebraska, holds a valid credential in another jurisdiction which has similar standards for the profession to the Uniform Credentialing Act and the rules and regulations adopted and promulgated under the act, and has submitted fingerprints for a criminal background check if required under section 38-131, the department shall issue a temporary credential to the applicant. The applicant shall not be required to pay any fees pursuant to the Uniform Credentialing Act for the temporary credential or the initial regular credential except the actual cost of the fingerprinting and criminal background check for an initial license under section 38-131.

(4) A temporary credential issued under this section shall be valid until the application for the regular credential is approved or rejected, not to exceed one year.

Source: Laws 2017, LB88, § 33; Laws 2019, LB112, § 7.

Operative Date: January 1, 2020

38-130. Credential; application; contents.

(1) An individual shall file an application for a credential to practice a profession with the department accompanied by the fee set pursuant to the Uniform Credentialing Act. The application shall contain:

(a) The legal name of the applicant;

(b) The date and place of birth of the applicant;

(c) The address of the applicant;

(d) The social security number of the applicant or the resident identification number of the applicant if the applicant is not a citizen of the United States and is otherwise eligible to be credentialed under section 38-129; and

(e) Any other information required by the department.

(2) A business shall file an application for a credential with the department accompanied by the fee set pursuant to the Uniform Credentialing Act. The application shall contain:

(a) The full name and address of the business;

(b) The full name and address of the owner of the business;

(c) The name of each person in control of the business;

(d) The social security number of the business if the applicant is a sole proprietorship; and

(e) Any other information required by the department.

(3) The applicant shall sign the application. If the applicant is a business, the application shall be signed by:

(a) The owner or owners if the applicant is a sole proprietorship, a partnership, or a limited liability company that has only one member;

(b) Two of its members if the applicant is a limited liability company that has more than one member;

(c) Two of its officers if the applicant is a corporation;

(d) The head of the governmental unit having jurisdiction over the business if the applicant is a governmental unit; or

(e) If the applicant is not an entity described in subdivisions (a) through (d) of this subsection, the owner or owners or, if there is no owner, the chief executive officer or comparable official.

(4) Each credential holder under the Uniform Credentialing Act shall notify the department of any change to the address of record so that the department can update the record of the credential holder under section 38-123.

(5) 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.

Source: Laws 1927, c. 167, § 8, p. 456; C.S.1929, § 71-207; R.S.1943, § 71-108; Laws 1979, LB 427, § 1; Laws 1986, LB 286, § 29; Laws 1986, LB 579, § 21; Laws 1986, LB 926, § 3; Laws 1987, LB 473, § 4; Laws 1991, LB 456, § 5; Laws 1994, LB 1210, § 15; Laws 1997, LB 752, § 156; Laws 1999, LB 828, § 11; R.S.1943, (2003), § 71-108; Laws 2007, LB463, § 30.

38-131. Criminal background check; when required.

(1) An applicant for an initial license to practice as a registered nurse, a licensed practical nurse, a physical therapist, a physical therapy assistant, a psychologist, an advanced emergency medical technician, an emergency medical technician, or a paramedic or to practice a profession which is authorized to prescribe controlled substances shall be subject to a criminal background check. A criminal background check may also be required for initial licensure or reinstatement of a license governed by the Uniform Credentialing Act if a criminal background check is required by an interstate licensure compact. Except as provided in subsection (3) of this section, the applicant shall submit with the application a full set of fingerprints which shall be forwarded to the Nebraska State Patrol to be submitted to the Federal Bureau of Investigation for a national criminal history record information check. The applicant shall authorize release of the results of the national criminal history record information check to the department. The applicant shall pay the actual cost of the fingerprinting and criminal background check.

(2) This section shall not apply to a dentist who is an applicant for a dental locum tenens under section 38-1122, to a physician or osteopathic physician who is an applicant for a physician locum tenens under section 38-2036, or to a veterinarian who is an applicant for a veterinarian locum tenens under section 38-3335.

(3) An applicant for a temporary educational permit as defined in section 38-2019 shall have ninety days from the issuance of the permit to comply with subsection (1) of this section and shall have his or her permit suspended after such ninety-day period if the criminal background check is not complete or revoked if the criminal background check reveals that the applicant was not qualified for the permit.

Source: Laws 2005, LB 306, § 2; Laws 2005, LB 382, § 15; Laws 2006, LB 833, § 1; R.S.Supp.,2006, § 71-104.01; Laws 2007, LB247, § 60; Laws 2007, LB463, § 31; Laws 2007, LB481, § 2; Laws 2011, LB687, § 1; Laws 2015, LB129, § 1; Laws 2018, LB731, § 1; Laws 2018, LB1034, § 5.

38-132. Examinations; application; fees.

Any person desiring to take an examination for credentialing purposes shall make application to the department or to the organization specified by the department prior to examination on a form provided by the department or such organization. Such application shall be accompanied by the examination fee and such documents and affidavits as are necessary to show the eligibility of the candidate to take such examination. All applications shall be in accordance with the rules and regulations of the department or such organization. When a national or standardized examination is required, the department may direct the applicant to apply directly to the organization administering the examination to take the examination.

Source: Laws 1927, c. 167, § 25, p. 460; C.S.1929, § 71-401; R.S.1943, § 71-125; Laws 1979, LB 427, § 14; Laws 1986, LB 286, § 36; Laws 1986, LB 579, § 28; Laws 1986, LB 926, § 13; Laws 1987, LB 473, § 13; Laws 1990, LB 1064, § 2; Laws 1991, LB 703, § 13; R.S.1943, (2003), § 71-125; Laws 2007, LB463, § 32.

38-133. Approved courses of study; approval required.

The department shall maintain a list of approved courses of study for the professions which are regulated by the Uniform Credentialing Act. The appropriate board shall make recommendations relative thereto and shall approve the list for its profession. The department shall approve the list for a profession if there is no appropriate board. No course of study shall be approved without the formal action of the department or the appropriate board. Any course of study whose graduates or students desire to take the Nebraska examination shall supply the department with the necessary data to allow the board and the department to determine whether that course of study should be approved.

Source: Laws 1927, c. 167, § 28, p. 461; C.S.1929, § 71-404; R.S.1943, § 71-128; Laws 1979, LB 427, § 15; Laws 1986, LB 286, § 37; Laws 1986, LB 579, § 29; Laws 1990, LB 1064, § 3; Laws 1999, LB 828, § 31; R.S.1943, (2003), § 71-128; Laws 2007, LB463, § 33.

38-134. Examinations; oral or practical; approval of national or other examination.

(1) The oral or practical work portion of any examination for a credential under the Uniform Credentialing Act may be given by the members of the appropriate board, the department, or an organization approved by the appropriate board or the department if there is no board. The oral examination questions shall be limited to the practice of the profession.

(2) The appropriate board may approve any national or other examination to constitute part or all of the credentialing examination for any of the professions which are regulated by the Uniform Credentialing Act.

Source: Laws 1927, c. 167, § 33, p. 462; C.S.1929, § 71-409; R.S.1943, § 71-133; Laws 1979, LB 427, § 18; Laws 1982, LB 449, § 1; Laws 1982, LB 450, § 1; Laws 1982, LB 448, § 1; Laws 1984, LB 470, § 4; Laws 1984, LB 481, § 15; Laws 1986, LB 286, § 39; Laws 1986, LB 579, § 31; Laws 1988, LB 1100, § 14; Laws 1989, LB 489, § 1; Laws 1990, LB 1064, § 6; Laws 1999, LB 828, § 35; Laws 2001, LB 209, § 2; R.S.1943, (2003), § 71-133; Laws 2007, LB463, § 34.

38-135. Examinations; time and place.

Examinations for credentialing shall be held on such dates and at such times and places as set by the department or the organization approved by the appropriate board or the department. Special examinations may be given at the expense of the applicant and administered by the department or the organization specified by the department.

Source: Laws 1927, c. 167, § 29, p. 461; C.S.1929, § 71-405; R.S.1943, § 71-129; Laws 1984, LB 470, § 3; Laws 1986, LB 926, § 14; Laws 1990, LB 1064, § 4; Laws 1996, LB 1108, § 7; Laws 1999, LB 828, § 32; R.S.1943, (2003), § 71-129; Laws 2007, LB463, § 35.

38-136. Examinations; passing score; reexaminations.

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

- (a) The appropriate board may specify the passing score on credentialing examinations;
- (b) An examinee who fails a credentialing examination may retake the entire examination or the part failed upon payment of the cost of retaking the examination; and
- (c) The department shall withhold from the credentialing fee submitted by an examinee the cost of any national examination used when an examinee fails a credentialing examination and shall return to the examinee the remainder of the credentialing fee collected subject to section 38-156, except that:
 - (i) If a state-administered jurisprudence portion of the credentialing 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 retaking such examination.

(2) A person who desires to take an examination but does not wish to receive a credential may take such examination by meeting the examination eligibility requirements and paying the cost of the examination.

Source: Laws 1927, c. 167, § 31, p. 462; C.S.1929, § 71-407; Laws 1939, c. 91, § 4, p. 394; C.S.Supp.,1941, § 71-407; R.S.1943, § 71-131; Laws 1969, c. 560, § 3, p. 2279; Laws 1979, LB 427, § 16; Laws 1983, LB 476, § 4; Laws 1984, LB 481, § 14; Laws 1985, LB 250, § 1; Laws 1986, LB 277, § 7; Laws 1986, LB 286, § 38; Laws 1986, LB 579, § 30; Laws 1986, LB 926, § 16; Laws 1986, LB 355, § 13; Laws 1988, LB 1100, § 13; Laws 1988, LB 557, § 19; Laws 1989, LB 342, § 10; Laws 1990, LB 1064, § 5; Laws 1991, LB 703, § 14; Laws 1993, LB 669, § 10; Laws 1994, LB 1210, § 21; Laws 1995, LB 406, § 17; Laws 1999, LB 828, § 33; Laws 2002, LB 1021, § 8; Laws 2002, LB 1062, § 12; Laws 2003, LB 242, § 18; Laws 2004, LB 1083, § 111; R.S.Supp.,2006, § 71-131; Laws 2007, LB481, § 3; Laws 2007, LB463, § 36.

38-137. Examinations; records maintained; eligibility.

(1) All questions, the answer key, and the examinees' answers connected with any examination for credentialing 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.

(2) When national examinations are accepted for credentialing, the department shall obtain from the national organization or testing service documentation that the examination development and maintenance process meets generally accepted standards for test development and maintenance.

(3) The department, with the recommendation of the appropriate board, may:

- (a) Specify credentialing examination application procedures;
- (b) Provide for the review of procedures for the development of examinations;
- (c) Provide for the administration of all or separate components of examinations; and
- (d) Protect the security of the content of examination questions and answers.

(4) The appropriate board may specify eligibility for taking the credentialing examination. In determining such eligibility, the board shall consider the practices of other states 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 credentials meet minimum standards of proficiency and competency for the protection of the health and safety of the public.

Source: Laws 1927, c. 167, § 38, p. 463; C.S.1929, § 71-414; R.S.1943, § 71-138; Laws 1969, c. 560, § 4, p. 2280; Laws 1978, LB 406, § 10; Laws 1979, LB 427, § 29; Laws 1986, LB 286, § 42; Laws 1986, LB 579, § 34; Laws 1986, LB 926, § 22; Laws 1987, LB 473, § 14; Laws 1990, LB 1064, § 7; Laws 1991, LB 703, § 16; Laws 1999, LB 828, § 36; R.S.1943, (2003), § 71-138; Laws 2007, LB463, § 37.

38-138. Inspection of business by department.

The department may inspect or provide for the inspection of any business credentialed or applying for a credential under the Uniform Credentialing Act. The department shall issue an inspection report and provide a copy of the report to the business within ten working days after the completion of an inspection.

Source: Laws 2007, LB463, § 38.

38-139. Inspection of business by State Fire Marshal or local fire prevention personnel.

The department may request the State Fire Marshal to inspect any business credentialed or applying for a credential under the Uniform Credentialing Act for fire safety pursuant to section 81-502. The State Fire Marshal shall assess a fee for such inspection pursuant to section 81-505.01 payable by such business. The State Fire Marshal may delegate such authority to make such inspections to qualified local fire prevention personnel pursuant to section 81-502.

Source: Laws 2007, LB463, § 39.

38-140. Report of unauthorized practice or unauthorized operation of business; investigation; cease and desist order; violation; penalty.

Every business credentialed under the Uniform Credentialing Act 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 or operating any business for which a credential is required by the Uniform Credentialing Act. The department may, along with other law enforcement agencies, investigate such reports or other complaints of unauthorized practice or unauthorized operation of a business. The director, with the recommendation of the appropriate board, may issue an order to cease and desist the unauthorized practice of such profession or unauthorized operation of such business as a measure to obtain compliance with the applicable credentialing requirements by the person or business prior to referral of the matter to the Attorney General for action. For businesses that do not have a board, the department may issue such cease and desist orders. Practice of such profession or operation of such business without a credential after receiving a cease and desist order is a Class III felony.

Source: Laws 2007, LB463, § 40; Laws 2016, LB859, § 1.

38-141. Inspector or investigator; appointment by department.

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 holds an active credential in the appropriate profession or any other qualified person who has been trained in investigational procedures and techniques to serve as such inspector or investigator.

Source: Laws 1953, c. 247, § 3, p. 850; Laws 1979, LB 427, § 13; Laws 1996, LB 1108, § 6; Laws 1999, LB 828, § 30; R.S.1943, (2003), § 71-124.01; Laws 2007, LB463, § 41.

38-142. Credential; expiration date; renewal; reinstatement; inactive status.

(1) The credential to practice a profession shall be renewed biennially upon request of the credentialed person and upon documentation of continuing competency pursuant to sections 38-145 and 38-146. The renewals provided for in this section shall be accomplished in such manner and on such date as the department, with the recommendation of the appropriate board, may establish.

The request for renewal shall include all information required by the department and shall be accompanied by the renewal fee. Such fee shall be paid not later than the date of the expiration of such credential, except that persons actively engaged in the military service of the United States, as defined in the Servicemembers Civil Relief Act, 50 U.S.C. App. 501 et seq., as the act existed on January 1, 2007, shall not be required to pay the renewal fee.

(2) At least thirty days before the expiration of a credential, the department shall notify each credentialed person at his or her last address of record. If a credentialed person fails to notify the department of his or her desire to have his or her credential placed on inactive status upon its expiration, fails to meet the requirements for renewal on or before the date of expiration of his or her credential, or otherwise fails to renew his or her credential, it shall expire. When a person's credential expires, the right to represent himself or herself as a credentialed person and to practice the profession in which a credential is required shall terminate. Any credentialed person who fails to renew the credential by the expiration date and desires to resume practice of the profession shall apply to the department for reinstatement of the credential.

(3) When a person credentialed pursuant to the Uniform Credentialing Act desires to have his or her credential placed on inactive status, 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 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, but he or she may represent himself or herself as having an inactive credential. A credential may remain on inactive status for an indefinite period of time.

Source: Laws 1927, c. 167, § 10, p. 456; C.S.1929, § 71-209; Laws 1933, c. 122, § 1, p. 492; Laws 1935, c. 142, § 29, p. 529; C.S.Supp.,1941, § 71-209; Laws 1943, c. 151, § 1, p. 551; R.S.1943, § 71-110; Laws 1953, c. 238, § 2, p. 824; Laws 1957, c. 298, § 7, p. 1077; Laws 1961, c. 337, § 5, p. 1051; Laws 1978, LB 406, § 3; Laws 1979, LB 427, § 3; Laws 1979, LB 428, § 1; Laws 1984, LB 481, § 8; Laws 1985, LB 129, § 4; Laws 1986, LB 277, § 4; Laws 1986, LB 286, § 30; Laws 1986, LB 579, § 22; Laws 1986, LB 926, § 4; Laws 1986, LB 355, § 10; Laws 1987, LB 473, § 5; Laws 1988, LB 1100, § 7; Laws 1988, LB 557, § 15; Laws 1989, LB 342, § 6; Laws 1990, LB 1064, § 1; Laws 1993, LB 187, § 4; Laws 1993, LB 669, § 5; Laws 1994, LB 1210, § 16; Laws 1994, LB 1223, § 3; Laws 1995, LB 406, § 13; Laws 1997, LB 197, § 1; Laws 1999, LB 828, § 12; Laws 2001, LB 270, § 3; Laws 2002, LB 1021, § 5; Laws 2003, LB 242, § 14; Laws 2004, LB 1083, § 106; R.S.Supp.,2006, § 71-110; Laws 2007, LB236, § 4; Laws 2007, LB463, § 42.

38-143. Credential to engage in business; renewal; procedure; notice of expiration.

(1) The credential to engage in a business shall be renewed biennially upon request of the credentialed business and completion of the renewal requirements. The renewals provided for in this section shall be accomplished in such manner and on such date as the department, with the recommendation of the appropriate board, may establish. The request for renewal shall include all information required by the department and shall be accompanied by the renewal fee. Such fee shall be paid not later than the date of the expiration of such credential.

(2) At least thirty days before the expiration of a credential, the department shall notify each credentialed business at its last address of record. If a credentialed business fails to meet the renewal requirements on or before the date of expiration of the credential, the credential shall expire. When a credential expires, the right to operate the business shall terminate. A business which fails to renew its credential by the expiration date shall apply for and obtain another credential prior to operating the business.

Source: Laws 2003, LB 242, § 15; Laws 2004, LB 906, § 1; Laws 2004, LB 1005, § 9; R.S.Supp.,2006, § 71-110.01; Laws 2007, LB463, § 43.

38-144. Credential; failure to pay fees; failure to meet continuing competency requirement; effect.

(1) The credential of any person who fails, by the expiration date of such credential, to pay the required renewal fee or to submit documentation of continuing competency shall automatically expire without further notice or hearing.

(2) The department shall refuse to renew after notice and opportunity for hearing, the credential of any person who fails, by the expiration date of such credential, to meet the applicable continuing competency requirement for renewal.

(3) Subsections (1) and (2) of this section shall not apply when the credential holder has given notification to the department that he or she desires to have his or her credential expire or be placed on inactive status upon expiration.

Source: Laws 1927, c. 167, § 48, p. 467; C.S.1929, § 71-603; Laws 1943, c. 150, § 12, p. 543; R.S.1943, § 71-149; Laws 1976, LB 877, § 2; Laws 1984, LB 481, § 19; Laws 1986, LB 286, § 47; Laws 1986, LB 579, § 39; Laws 1987, LB 473, § 17; Laws 1988, LB 1100, § 18; Laws 1994, LB 1210, § 28; Laws 2002, LB 1021, § 10; Laws 2003, LB 242, § 20; R.S.1943, (2003), § 71-149; Laws 2007, LB463, § 44.

38-145. Continuing competency requirements; board; duties.

(1) The appropriate board shall establish continuing competency requirements for persons seeking renewal of a credential.

(2) The purposes of continuing competency requirements are to ensure (a) the maintenance by a credential holder of knowledge and skills necessary to competently practice his or her profession, (b) the utilization of new techniques based on scientific and clinical advances, and (c) the promotion of research to assure expansive and comprehensive services to the public.

(3) Each board shall consult with the department and the appropriate professional academies, professional societies, and professional associations in the development of such requirements.

(4)(a) For a profession for which there are no continuing education requirements on December 31, 2002, the requirements may include, but not be limited to, any one or a combination of the continuing competency activities listed in subsection (5) of this section.

(b) For a profession for which there are continuing education requirements on December 31, 2002, continuing education is sufficient to meet continuing competency requirements. The requirements may also include, but not be limited to, any one or a combination of the continuing competency activities listed in subdivisions (5)(b) through (5)(p) of this section which a credential holder may select as an alternative to continuing education.

(5) Continuing competency activities may include, but not be limited to, any one or a combination of the following:

(a) Continuing education;

(b) Clinical privileging in an ambulatory surgical center or hospital as defined in section 71-405 or 71-419;

(c) Board certification in a clinical specialty area;

(d) Professional certification;

- (e) Self-assessment;
- (f) Peer review or evaluation;
- (g) Professional portfolio;
- (h) Practical demonstration;
- (i) Audit;
- (j) Exit interviews with consumers;
- (k) Outcome documentation;
- (l) Testing;
- (m) Refresher courses;
- (n) Inservice training;
- (o) Practice requirement; or
- (p) Any other similar modalities.

(6) Beginning with the first license renewal period which begins on or after October 1, 2018, the continuing competency requirements for a nurse midwife, dentist, physician, physician assistant, nurse practitioner, podiatrist, and veterinarian who prescribes controlled substances shall include at least three hours of continuing education biennially regarding prescribing opiates as defined in section 28-401. The continuing education may include, but is not limited to, education regarding prescribing and administering opiates, the risks and indicators regarding development of addiction to opiates, and emergency opiate situations. One-half hour of the three hours of continuing education shall cover the prescription drug monitoring program described in sections 71-2454 to 71-2456. This subsection terminates on January 1, 2029.

Source: Laws 1976, LB 877, § 14; Laws 1984, LB 481, § 21; Laws 1985, LB 250, § 4; Laws 1986, LB 286, § 62; Laws 1986, LB 579, § 54; Laws 1992, LB 1019, § 38; Laws 1994, LB 1210, § 41; Laws 1999, LB 828, § 47; Laws 2002, LB 1021, § 12; R.S.1943, (2003), § 71-161.09; Laws 2007, LB463, § 45; Laws 2018, LB731, § 2.

38-146. Continuing competency requirements; compliance; waiver; audits.

(1) Each person holding an active credential within the state shall, on or before the date of expiration of his or her credential, comply with continuing competency requirements for his or her profession. Except as otherwise provided in this section, the department shall not renew the credential of any person who has not complied with such requirements.

(2) The department may waive continuing competency requirements, in whole or in part, upon submission by a credential holder of documentation that circumstances beyond his or her control have prevented completion of such requirements. Such circumstances shall include, but not be limited to:

- (a) The credential holder has served in the regular armed forces of the United States during part of the credentialing period immediately preceding the renewal date;
- (b) The credential holder was first credentialed within the credentialing period immediately preceding the renewal date; or
- (c) Other circumstances prescribed by rules and regulations adopted and promulgated under the appropriate practice act.

(3) Each credential holder shall be responsible for maintaining certificates or records of continuing competency activities.

The department or appropriate board may biennially select, in a random manner, a sample of the renewal applications for audit of continuing competency requirements. Each credential holder selected for audit shall be required to produce documentation of the continuing competency activities. The credential of any person who fails to comply with the conditions of the audit shall expire thirty days after notice and an opportunity for a hearing.

Source: Laws 1976, LB 877, § 15; Laws 1985, LB 250, § 5; Laws 1986, LB 286, § 63; Laws 1986, LB 579, § 55; Laws 1986, LB 926, § 34; Laws 1994, LB 1210, § 42; Laws 1997, LB 307, § 120; Laws 1999, LB 828, § 48; Laws 2001, LB 209, § 3; Laws 2002, LB 1021, § 13; R.S.1943, (2003), § 71-161.10; Laws 2007, LB463, § 46.

38-147. Credential; reinstatement; application; department; powers.

(1) Any person who desires to reinstate a credential after the date of expiration or from inactive to active status shall apply to the department for reinstatement. The credential may be reinstated upon the receipt of evidence of meeting the renewal requirements, or the requirements specified under the practice act for the appropriate profession, which are in effect at the time the credential holder applies to regain active status and payment of reinstatement and renewal fees if applicable.

(2) The department, with the recommendation of the appropriate board, may deny an application for reinstatement or may issue the credential subject to any of the terms of section 38-196 if the applicant has committed any of the acts set out in section 38-178.

(3) A credential holder who elected to have his or her credential placed on lapsed status prior to December 1, 2008, may have the credential reinstated in accordance with this section.

Source: Laws 2007, LB463, § 47.

38-148. Credential; suspended, revoked, or other limitations; apply for reinstatement; when.

(1) A person whose credential has been suspended or has had limitations placed thereon for any reason specified in sections 38-178 and 38-179 may apply for reinstatement of the credential at any time. The application shall include such information as may be required by the department.

(2) A person whose credential has been revoked for any reason specified in such sections may apply for reinstatement of the credential after a period of two years has elapsed from the date of revocation. The application shall include such information as may be required by the department.

Source: Laws 1976, LB 877, § 9; Laws 1986, LB 286, § 57; Laws 1986, LB 579, § 49; Laws 1986, LB 926, § 32; Laws 1988, LB 1100, § 23; Laws 1994, LB 1210, § 37; Laws 1999, LB 828, § 45; R.S.1943, (2003), § 71-161.04; Laws 2007, LB463, § 48.

38-149. Application for reinstatement of credential for profession with board; when considered and acted upon; hearing; when allowed; procedure; appeal.

(1) Upon receipt of an application under section 38-148 for reinstatement of a credential in a profession that has a board, the application shall be sent to the board for consideration. Any application for reinstatement, accompanied by the required information and documentation, shall be acted upon by the board within one hundred eighty days after the filing of the completed application.

(2) The department, with the recommendation of the appropriate board, may:

(a) Conduct an investigation to determine if the applicant has committed acts or offenses prohibited by section 38-178;

(b) Require the applicant to submit to a complete diagnostic examination at the expense of the applicant by one or more physicians or other qualified professionals appointed by the board, the applicant being free also to consult a physician or physicians or other professionals of his or her own choice for an evaluation or diagnostic examination and to make available a report or reports thereof to the department and the appropriate board;

(c) Require the applicant to pass a written, oral, or practical examination or any combination of such examinations at the expense of the applicant;

(d) Require the applicant to successfully complete additional education at the expense of the applicant;

(e) Require the applicant to successfully pass an inspection of his or her practice site; or

(f) Take any combination of the actions in this subsection.

(3) On the basis of material submitted by the applicant, the results of any inspection or investigation by the department, and the completion of any requirements imposed under subsection (2) of this section, the board shall (a) deny the application for reinstatement or (b) recommend to the department (i) full reinstatement of the credential, (ii) modification of the suspension or limitation, or (iii) reinstatement of the credential subject to limitations or subject to probation with terms and conditions.

(4) The decision of the board shall become final thirty days after mailing the decision to the applicant unless the applicant requests a hearing within such thirty-day period. If the applicant requests a hearing before the board, the department shall mail notice of the date, time, and location of the hearing to the applicant at least thirty days prior to the hearing. If the applicant has been afforded a hearing or an opportunity for a hearing on an application for reinstatement within two years prior to filing the current application, the department may grant or deny such application without another hearing before the board. The affirmative vote of a majority of the members of the board shall be necessary to recommend reinstatement of a credential with or without terms, conditions, or restrictions.

(5)(a) The department may only consider applications for reinstatement with an affirmative recommendation of the appropriate board. If the board recommends (i) full reinstatement of the credential, (ii) modification of the suspension or limitation, or (iii) reinstatement of the credential subject to limitations or subject to probation with terms and conditions, the board's recommendation shall be sent to the applicant by certified mail and forwarded to the director for a decision.

(b) The director shall receive (i) the written recommendation of the board, including any finding of fact or order of the board, (ii) the application for reinstatement, (iii) the record of hearing if any, and (iv) any pleadings, motions, requests, preliminary or intermediate rulings and orders, and similar correspondence to or from the board and the applicant.

(c) 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 (i) in excess of statutory authority, (ii) made upon unlawful procedure, (iii) unsupported by competent, material, and substantial evidence in view of the entire record, or (iv) arbitrary or capricious.

(6) The director's decision may be appealed by any party to the decision. The appeal shall be in accordance with the Administrative Procedure Act.

(7) Denial by a board of an application for reinstatement may be appealed. The appeal shall be in accordance with the Administrative Procedure Act.

Source: Laws 1976, LB 877, § 11; Laws 1986, LB 286, § 59; Laws 1986, LB 579, § 51; Laws 1990, LB 1064, § 8; Laws 1994, LB 1210, § 39; Laws 1996, LB 1044, § 390; R.S.1943, (2003), § 71-161.06; Laws 2007, LB296, § 312; Laws 2007, LB463, § 49.

Cross References

- **Administrative Procedure Act**, see section 84-920.

38-150. Application for reinstatement of credential for profession without board; department; procedure; hearing; when allowed; appeal.

(1) Upon receipt of an application for reinstatement of a credential in a profession that does not have a board, the application shall be considered by the department.

(2) The department may:

(a) Conduct an investigation to determine if the applicant has committed acts or offenses prohibited by section 38-178;

(b) Require the applicant to submit to a complete diagnostic examination by one or more physicians or other qualified professionals appointed by the department, the applicant being free also to consult a physician or physicians or other professionals of his or her own choice for an evaluation or diagnostic examination and to make available a report or reports thereof to the department;

(c) Require the applicant to pass a written, oral, or practical examination or any combination of such examinations;

(d) Require the applicant to successfully complete additional education;

(e) Require the applicant, if a business, to successfully complete an inspection; or

(f) Take any combination of the actions in this subsection.

(3) On the basis of material submitted by the applicant, the results of any inspection or investigation by the department, and the completion of any requirements imposed under subsection (2) of this section, the department shall (a) deny the application for reinstatement, (b) grant the application for reinstatement, (c) modify the probation, suspension, or limitation, or (d) reinstate the credential subject to limitations or subject to probation with terms and conditions.

(4) The decision of the department shall become final thirty days after mailing the decision to the applicant unless the applicant requests a hearing within such thirty-day period. If the applicant requests a hearing, the department shall mail notice of the date, time, and location of the hearing to the applicant at least thirty days prior to the hearing. Any requested hearing shall be held according to rules and regulations of the department for administrative hearings in contested cases. Any party to the decision shall have a right to appeal. Such appeal shall be in accordance with the Administrative Procedure Act.

(5) If the applicant has been afforded a hearing or an opportunity for a hearing on an application for reinstatement within two years prior to filing the current application, the department may grant or deny such application without another hearing.

Source: Laws 2007, LB463, § 50.

Cross References

- **Administrative Procedure Act**, see section 84-920.

38-151. Credentialing system; administrative costs; how paid; patient safety fee.

(1) It is the intent of the Legislature that the revenue to cover the cost of the credentialing system administered by the department is to be derived from General Funds, cash funds, federal funds, gifts, grants, or fees from individuals or businesses seeking credentials except as otherwise provided in section 38-155. The credentialing system includes the totality of the credentialing infrastructure and the process of issuance and renewal of credentials, examinations, inspections, investigations, continuing competency, compliance assurance, the periodic review under section 38-128, and the activities conducted under the Nebraska Regulation of Health Professions Act, for individuals and businesses that provide health services, health-related services, and environmental services.

(2) The department shall determine the cost of the credentialing system for such individuals and businesses by calculating the total of the base costs, the variable costs, and any adjustments as provided in sections 38-152 to 38-154.

(3) When fees are to be established pursuant to section 38-155 for individuals or businesses other than individuals in the practice of constructing or decommissioning water wells and installing water well pumps and pumping equipment, the department, with the recommendation of the appropriate board if applicable, shall base the fees on the cost of the credentialing system and shall include usual and customary cost increases, a reasonable reserve, and the cost of any new or additional credentialing activities. For individuals in the practice of constructing or decommissioning water wells and installing water well pumps and pumping equipment, the Water Well Standards and Contractors' Licensing Board shall establish the fees as otherwise provided in this subsection. All such fees shall be used as provided in section 38-157.

(4) In addition to the fees established under section 38-155, each applicant for the initial issuance and renewal of a credential to practice as a physician or an osteopathic physician under the Medicine and Surgery Practice Act shall pay a patient safety fee of fifty dollars and to practice as a physician assistant under the Medicine and Surgery Practice Act shall pay a patient safety fee of twenty dollars, which fee shall be collected biennially with the initial or renewal fee for the credential. Revenue from such fee shall be remitted to the State Treasurer for credit to the Patient Safety Cash Fund. The patient safety fee shall terminate on January 1, 2026, unless extended by the Legislature.

Source: Laws 1927, c. 167, § 61, p. 469; C.S.1929, § 71-701; Laws 1935, c. 142, § 34, p. 531; Laws 1937, c. 157, § 1, p. 615; Laws 1941, c. 141, § 1, p. 555; C.S.Supp.,1941, § 71-701; Laws 1943, c. 150, § 16, p. 545; R.S.1943, § 71-162; Laws 1953, c. 238, § 3, p. 825; Laws 1955, c. 270, § 2, p. 850; Laws 1957, c. 292, § 1, p. 1048; Laws 1957, c. 298, § 12, p. 1080; Laws 1959, c. 318, § 2, p. 1166; Laws 1961, c. 337, § 8, p. 1054; Laws 1963, c. 409, § 1, p. 1314; Laws 1965, c. 412, § 1, p. 1319; Laws 1967, c. 438, § 4, p. 1350; Laws 1967, c. 439, § 17, p. 1364; Laws 1969, c. 560, § 6, p. 2281; Laws 1969, c. 562, § 1, p. 2288; Laws 1971, LB 300, § 1; Laws 1971, LB 587, § 9; Laws 1973, LB 515, § 3; Laws 1975, LB 92, § 1; Laws 1978, LB 689, § 1; Laws 1978, LB 406, § 12; Laws 1979, LB 4, § 6; Laws 1979, LB 428, § 3; Laws 1981, LB 451, § 8; Laws 1982, LB 263, § 1; Laws 1982, LB 448, § 2; Laws 1982, LB 449, § 2; Laws 1982, LB 450, § 2; Laws 1984, LB 481, § 22; Laws 1985, LB 129, § 12; Laws 1986, LB 277, § 8; Laws 1986, LB 286, § 72; Laws 1986, LB 579, § 64; Laws 1986, LB 926, § 36; Laws 1986, LB 355, § 14; Laws 1987, LB 473, § 18; Laws 1988, LB 1100, § 26; Laws 1988, LB 557, § 20; Laws 1989, LB 342, § 12; Laws 1990, LB 1064, § 9; Laws 1991, LB 703, § 17; Laws 1992, LB 1019, § 39; Laws 1993, LB 187, § 7; Laws 1993, LB 669, § 12; Laws 1994, LB 1210, § 46; Laws 1994, LB 1223, § 9; Laws 1995, LB 406, § 18; Laws 1997, LB 622, § 80; Laws 1999, LB 828, § 54; Laws 2001, LB 270, § 7; Laws 2003, LB 242, § 23; Laws 2004, LB 906, § 2; Laws 2004, LB 1005, § 10; Laws 2004, LB 1083, § 113; Laws 2006, LB 994, § 81; R.S.Supp.,2006, § 71-162; Laws 2007, LB236, § 6; Laws 2007, LB283, § 1; Laws 2007, LB463, § 51; Laws 2012, LB834, § 1; Laws 2019, LB25, § 1; Laws 2019, LB112, § 8.

Operative Date: January 1, 2020

Note: The Revisor of Statutes has pursuant to section 49-769 correlated LB25, section 1, with LB112, section 8, to reflect all amendments.

Cross References

- **Fees of state boards**, see sections 33-151 and 33-152.
- **Medicine and Surgery Practice Act**, see section 38-2001.
- **Nebraska Regulation of Health Professions Act**, see section 71-6201.

38-152. Base costs of credentialing.

Base costs of credentialing are the costs that are common to all professions and businesses listed in section 38-121 and include the following:

- (1) Salaries and benefits for employees of the department who work with credentialing activities;
- (2) Shared operating costs for credentialing activities that are not specific to a particular profession or business such as indirect costs, rent, and utilities;
- (3) Costs related to compliance assurance, including investigative costs, contested case costs, and compliance monitoring;
- (4) Costs of the Licensee Assistance Program under section 38-175;
- (5) Capital costs, including office equipment and computer hardware or software, which are not specific to a particular profession or business; and
- (6) Other reasonable and necessary costs as determined by the department.

Source: Laws 2003, LB 242, § 24; R.S.1943, (2003) § 71-162.01; Laws 2007, LB463, § 52.

38-153. Variable costs of credentialing.

Variable costs of credentialing are the costs that are unique to a specific profession or business listed in section 38-121 and include the following:

- (1) Per diems which are paid to members of the appropriate board;

- (2) Operating costs that are specific to a particular profession or business, including publications, conference registrations, and subscriptions;
- (3) Costs for travel by members of the appropriate board and employees of the department related to a particular profession or business, including car rental, gas, and mileage charges but not salaries;
- (4) Costs to operate and administer the Nebraska Center for Nursing, which costs shall be derived from credentialing fees of registered and practical nurses in accordance with section 71-1798.01; and
- (5) Other reasonable and necessary costs as determined by the appropriate board or the department.

Source: Laws 2003, LB 242, § 25; Laws 2005, LB 243, § 1; R.S.1943, (2003), § 71-162.02; Laws 2007, LB463, § 53.

38-154. Adjustments to the cost of credentialing.

Adjustments to the cost of credentialing include, but are not limited to:

- (1) Revenue from sources that include, but are not limited to:
 - (a) Interest earned on the Professional and Occupational Credentialing Cash Fund, if any;
 - (b) Certification and verification of credentials;
 - (c) Administrative fees;
 - (d) Reinstatement fees;
 - (e) General Funds and federal funds;
 - (f) Fees for miscellaneous services, such as production of photocopies, lists, labels, and diskettes;
 - (g) Gifts; and
 - (h) Grants;
- (2) Transfers to other funds for costs related to the Nebraska Regulation of Health Professions Act and section 38-128; and
- (3) Costs associated with subsection (3) of section 38-155.

Source: Laws 2003, LB 242, § 26; R.S.1943, (2003), § 71-162.03; Laws 2007, LB463, § 54; Laws 2019, LB112, § 9.

Operative Date: January 1, 2020

Cross References

- **Nebraska Regulation of Health Professions Act**, see section 71-6201.

38-155. Credentialing fees; establishment and collection.

(1) Subject to subsection (3) of this section, the department, with the recommendation of the appropriate board if applicable, or the Water Well Standards and Contractors' Licensing Board as provided in section 38-151, shall adopt and promulgate rules and regulations to establish and collect the fees for the following credentials:

- (a) Initial credentials, which include, but are not limited to:
 - (i) Licensure, certification, or registration;
 - (ii) Add-on or specialty credentials;
 - (iii) Temporary, provisional, or training credentials; and
 - (iv) Supervisory or collaborative relationship credentials;
- (b) Applications to renew licenses, certifications, and registrations;
- (c) Approval of continuing education courses and other methods of continuing competency; and
- (d) Inspections and reinspections.

(2) When a credential will expire within one hundred eighty days after its initial issuance date or its reinstatement date and the initial credentialing or renewal fee is twenty-five dollars or more, the department shall collect twenty-five dollars or one-fourth of the initial credentialing or renewal fee, whichever is greater, for the initial or reinstated credential. The initial or reinstated credential shall be valid until the next subsequent renewal date.

(3) All fees for initial credentials under the Uniform Credentialing Act for low-income individuals, military families, and young workers shall be waived except the actual cost of the fingerprinting and criminal background check for an initial license under section 38-131.

Source: Laws 2003, LB 242, § 27; R.S.1943, (2003), § 71-162.04; Laws 2007, LB463, § 55; Laws 2012, LB773, § 1; Laws 2019, LB112, § 10.

Operative Date: January 1, 2020

38-156. Administrative and other fees; amount.

(1) The department shall retain a twenty-five-dollar administrative fee from each credentialing fee established under section 38-155 for a denied credential or a withdrawn application, except that (a) if the credentialing fee is less than twenty-five dollars, the fee shall be forfeited and (b) an examination fee shall not be returned.

- (2) The department shall collect fees for services as follows:
 - (a) Ten dollars for a duplicate original or reissued credential;

- (b) Twenty-five dollars for certification of a credential pursuant to section 38-125;
- (c) Five dollars for verification of a credential pursuant to section 38-125; and
- (d) A reinstatement fee of thirty-five dollars in addition to the renewal fee to reinstate an expired or inactive credential for professions specified in section 38-121.

Source: Laws 2003, LB 242, § 28; R.S.1943, (2003), § 71-162.05; Laws 2007, LB463, § 56.

38-157. Professional and Occupational Credentialing Cash Fund; created; use; investment.

(1) The Professional and Occupational Credentialing Cash Fund is created. Except as provided in section 71-17,113, the fund shall consist of all fees, gifts, grants, and other money, excluding fines and civil penalties, received or collected by the department under sections 38-151 to 38-156 and the Nebraska Regulation of Health Professions Act.

(2) The department shall use the fund for the administration and enforcement of such laws regulating the individuals and businesses listed in section 38-121. Transfers may be made from the fund to the General Fund at the direction of the Legislature. The State Treasurer shall transfer any money in the Nebraska Regulation of Health Professions Fund on July 19, 2012, to the Professional and Occupational Credentialing Cash Fund.

(3) Any money in the Professional and Occupational Credentialing Cash 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.

Source: Laws 1927, c. 167, § 62, p. 471; C.S.1929, § 71-702; R.S.1943, § 71-163; Laws 1986, LB 926, § 37; Laws 1988, LB 1100, § 27; Laws 1994, LB 1210, § 47; Laws 2003, LB 242, § 30; Laws 2005, LB 146, § 10; R.S.Supp.,2006, § 71-163; Laws 2007, LB463, § 57; Laws 2009, First Spec. Sess., LB3, § 19; Laws 2012, LB834, § 2.

Cross References

- **Nebraska Capital Expansion Act**, see section 72-1269.
- **Nebraska Regulation of Health Professions Act**, see section 71-6201.
- **Nebraska State Funds Investment Act**, see section 72-1260.

38-158. Boards; appointment; vacancy.

(1) The State Board of Health shall appoint members to the boards designated in section 38-167 except the Board of Emergency Medical Services and the Water Well Standards and Contractors' Licensing Board.

(2) Any vacancy in the membership of a board caused by death, resignation, removal, or otherwise shall be filled for the unexpired term in the same manner as original appointments are made.

Source: Laws 1927, c. 167, § 11, p. 457; C.S.1929, § 71-301; R.S.1943, § 71-111; Laws 1979, LB 427, § 4; Laws 1981, LB 451, § 2; Laws 1986, LB 286, § 31; Laws 1986, LB 579, § 23; Laws 1987, LB 473, § 6; Laws 1989, LB 342, § 7; Laws 1994, LB 1210, § 17; Laws 1999, LB 828, § 13; Laws 2001, LB 270, § 4; Laws 2002, LB 1021, § 6; R.S.1943, (2003), § 71-111; Laws 2007, LB463, § 58.

38-159. Board; application; professional member; state association or society recommendation.

(1) Any person who desires to be considered for an appointment to a board appointed by the State Board of Health and who possesses the necessary qualifications for such appointment may apply in a manner specified by the State Board of Health. The State Board of Health shall consider such applications and may appoint any qualified person so applying to the appropriate board.

(2) A state association or society, or its managing board, for each profession may submit to the State Board of Health a list of persons of recognized ability in such profession who have the qualifications prescribed for professional members of the board for that particular profession. If such a list is submitted, the State Board of Health shall consider the names on such list and may appoint one of the persons so named.

Source: Laws 1927, c. 167, § 17, p. 458; C.S.1929, § 71-307; Laws 1939, c. 91, § 3, p. 394; C.S.Supp.,1941, § 71-307; R.S.1943, § 71-117; Laws 1979, LB 427, § 8; Laws 1992, LB 860, § 1; Laws 1999, LB 828, § 21; R.S.1943, (2003), § 71-117; Laws 2007, LB463, § 59.

38-160. Board; member; removal; procedure; grounds.

(1) The State Board of Health shall have power to remove from office at any time any member of a board for which it appoints the membership, 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 not maintaining the qualifications established in sections 38-164 and 38-165, for any cause for which a credential in the profession or business involved may be suspended or revoked under section 38-178 or 38-179, or for a lack of a credential in the profession or business involved.

(2) The State Board of Health shall have full access to such complaints or investigational records as necessary and appropriate in the discharge of its duties under subsection (1) of this section and section 38-158.

Source: Laws 1927, c. 167, § 18, p. 458; C.S.1929, § 71-308; R.S.1943, § 71-118; Laws 1979, LB 427, § 9; Laws 1986, LB 286, § 35; Laws 1986, LB 579, § 27; Laws 1987, LB 473, § 12; Laws 1993, LB 187, § 6; Laws 1994, LB 1210, § 20; Laws 1999, LB 828, § 22; R.S.1943, (2003), § 71-118; Laws 2007, LB463, § 60.

Cross References

- **Administrative Procedure Act**, see section 84-920.

38-161. Boards; purpose; duties; advisory committees or bodies authorized.

(1) The purpose of each board is to protect the health, safety, and welfare of the public as prescribed in the Uniform Credentialing Act.

(2) The duties of each board include, but are not limited to, (a) setting the minimum standards of proficiency and competency in accordance with section 38-126, (b) providing recommendations in accordance with section 38-149, (c) providing recommendations related to the issuance or denial of credentials, disciplinary action, and changes in legislation, and (d) providing the department with recommendations on regulations to carry out the Uniform Credentialing Act in accordance with section 38-126.

(3) Each board may appoint advisory committees or other advisory bodies as necessary for specific purposes. At least one board member shall serve on each advisory committee or body, and other members may be appointed from outside the board.

Source: Laws 1982, LB 448, § 3; Laws 1987, LB 473, § 7; Laws 1999, LB 828, § 16; R.S.1943, (2003), § 71-112.03; Laws 2007, LB463, § 61.

38-162. Boards; membership.

Except as otherwise provided in the Uniform Credentialing Act:

(1) Each board shall consist of four members;

(2) Each board shall have at least one public member; and

(3) If a board has eleven or more members, it shall have at least three public members.

Source: Laws 1927, c. 167, § 13, p. 457; C.S.1929, § 71-303; Laws 1943, c. 150, § 5, p. 540; R.S.1943, § 71-113; Laws 1963, c. 408, § 4, p. 1311; Laws 1971, LB 587, § 2; Laws 1978, LB 406, § 5; Laws 1979, LB 427, § 6; Laws 1980, LB 94, § 3; Laws 1983, LB 476, § 1; Laws 1984, LB 481, § 10; Laws 1985, LB 129, § 6; Laws 1986, LB 277, § 6; Laws 1986, LB 286, § 33; Laws 1986, LB 579, § 25; Laws 1986, LB 355, § 12; Laws 1987, LB 473, § 8; Laws 1988, LB 1100, § 9; Laws 1988, LB 557, § 17; Laws 1993, LB 669, § 7; Laws 1994, LB 1223, § 4; Laws 1995, LB 406, § 15; Laws 1999, LB 828, § 17; Laws 2004, LB 1083, § 108; Laws 2006, LB 994, § 80; R.S.Supp.,2006, § 71-113; Laws 2007, LB463, § 62.

38-163. Boards; members; term.

(1) The members of each board shall be appointed for terms of five years except as otherwise provided in the Uniform Credentialing Act. No member shall be appointed for or serve for more than two consecutive full five-year terms except as otherwise specifically provided in the act.

(2) The term of each member shall commence on the first day of December following the expiration of the term of the member whom such person succeeds except as otherwise provided in the act.

Source: Laws 1943, c. 150, § 8, p. 541; R.S.1943, § 71-116; Laws 1957, c. 298, § 10, p. 1079; Laws 1963, c. 408, § 5, p. 1311; Laws 1971, LB 587, § 4; Laws 1978, LB 406, § 7; Laws 1979, LB 297, § 3; Laws 1979, LB 428, § 2; Laws 1981, LB 451, § 4; Laws 1983, LB 476, § 2; Laws 1984, LB 481, § 12; Laws 1985, LB 129, § 8; Laws 1986, LB 286, § 34; Laws 1986, LB 579, § 26; Laws 1986, LB 926, § 7; Laws 1987, LB 473, § 11; Laws 1988, LB 1100, § 11; Laws 1993, LB 669, § 9; Laws 1994, LB 1210, § 19; Laws 1994, LB 1223, § 5; Laws 1999, LB 828, § 20; Laws 2004, LB 1083, § 110; R.S.Supp.,2006, § 71-116; Laws 2007, LB463, § 63.

38-164. Boards; professional members; qualifications.

(1) A professional member of a board appointed under the Uniform Licensing Law prior to December 1, 2008, shall remain subject to the requirements of the original appointment until reappointed under the Uniform Credentialing Act. Except as otherwise provided in the Uniform Credentialing Act, every professional member of a board appointed on or after December 1, 2008, shall have held and maintained an active credential and be and have been actively engaged in the practice of his or her profession for a period of five years just preceding his or her appointment and shall maintain such credential and practice while serving as a board member. For purposes of this section, active practice means devoting a substantial portion of time to rendering professional services.

(2) Each professional member of a board shall have been a resident of Nebraska for one year and shall remain a resident of Nebraska while serving as a board member.

Source: Laws 1927, c. 167, § 14, p. 458; C.S.1929, § 71-304; Laws 1935, c. 142, § 31, p. 530; C.S.Supp.,1941, § 71-304; Laws 1943, c. 150, § 6, p. 540; R.S.1943, § 71-114; Laws 1957, c. 298, § 9, p. 1078; Laws 1978, LB 406, § 6; Laws 1979, LB 427, § 7; Laws 1984, LB 481, § 11; Laws 1985, LB 129, § 7; Laws 1986, LB 926, § 5; Laws 1987, LB 473, § 9; Laws 1988, LB 1100, § 10; Laws 1988, LB 557, § 18; Laws 1993, LB 669, § 8; Laws 1994, LB 1210, § 18; Laws 1995, LB 406, § 16; Laws 1999, LB 828, § 18; Laws 2004, LB 1083, § 109; R.S.Supp.,2006, § 71-114; Laws 2007, LB463, § 64.

38-165. Boards; public members; qualifications.

A public member of a board appointed under the Uniform Licensing Law prior to December 1, 2008, shall remain subject to the requirements of the original appointment until reappointed under the Uniform Credentialing Act. At the time of appointment and while serving as a board member, a public member appointed to a board on or after December 1, 2008, shall:

- (1) Have been a resident of this state for one year;
- (2) Remain a resident of Nebraska while serving as a board member;
- (3) Have attained the age of nineteen years;
- (4) Represent the interests and viewpoints of the public;
- (5) Not hold an active credential in any profession or business which is subject to the Uniform Credentialing Act, issued in Nebraska or in any other jurisdiction, at any time during the five years prior to appointment;
- (6) Not be eligible for appointment to a board which regulates a profession or business in which that person has ever held a credential;
- (7) Not be or not have been, at any time during the year prior to appointment, an employee of a member of a profession credentialed by the department, of a facility credentialed pursuant to the Health Care Facility Licensure Act, of a business credentialed pursuant to the Uniform Credentialing Act, or of a business regulated by the board to which the appointment is being made;
- (8) Not be the parent, child, spouse, or household member of any person presently regulated by the board to which the appointment is being made;
- (9) Have no material financial interest in the profession or business regulated by such board; and
- (10) Not be a member or employee of the legislative or judicial branch of state government.

Source: Laws 2007, LB463, § 65; Laws 2014, LB132, § 10.

Cross References

- **Health Care Facility Licensure Act**, see section 71-401.

38-166. Initial board subject to act; additional qualifications for members.

For professions coming within the scope of the Uniform Credentialing Act for the first time:

- (1) A professional member of a board shall not be required to have held and maintained an active credential for a period of five years just preceding his or her appointment. Members appointed during the first five years after a profession comes within the scope of the act shall be required to meet the minimum qualifications for credentialing and shall, insofar as possible, meet the requirements as to years of practice in this state otherwise provided by section 38-164;
- (2) All professional members appointed to an initial board shall be 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 credentialed, whichever is later. If for any reason a professional member is not credentialed within such time period, a new professional member shall be appointed to take his or her place;
- (3) Members shall be appointed to the initial board within thirty days after the effective or operative date, whichever is later, of the legislation providing for credentialing of the profession; and
- (4) The terms of the initial board members shall be as follows: One member shall hold office until December 1 of the third year following the year in which the legislation providing for credentialing of the profession became effective; two, including one public member, until December 1 of the fourth year; and two, including one public member, until December 1 of the fifth year.

Source: Laws 2007, LB463, § 66.

38-167. Boards; designated; change in name; effect.

- (1) Boards shall be designated as follows:
 - (a) Board of Advanced Practice Registered Nurses;
 - (b) Board of Alcohol and Drug Counseling;
 - (c) Board of Athletic Training;
 - (d) Board of Audiology and Speech-Language Pathology;
 - (e) Board of Chiropractic;
 - (f) Board of Cosmetology, Electrology, Esthetics, Nail Technology, and Body Art;

- (g) Board of Dentistry;
- (h) Board of Emergency Medical Services;
- (i) Board of Registered Environmental Health Specialists;
- (j) Board of Funeral Directing and Embalming;
- (k) Board of Hearing Instrument Specialists;
- (l) Board of Massage Therapy;
- (m) Board of Medical Nutrition Therapy;
- (n) Board of Medical Radiography;
- (o) Board of Medicine and Surgery;
- (p) Board of Mental Health Practice;
- (q) Board of Nursing;
- (r) Board of Nursing Home Administration;
- (s) Board of Occupational Therapy Practice;
- (t) Board of Optometry;
- (u) Board of Pharmacy;
- (v) Board of Physical Therapy;
- (w) Board of Podiatry;
- (x) Board of Psychology;
- (y) Board of Respiratory Care Practice;
- (z) Board of Veterinary Medicine and Surgery; and
- (aa) Water Well Standards and Contractors' Licensing Board.

(2) Any change made by the Legislature of the names of boards listed in this section shall not change the membership of such boards or affect the validity of any action taken by or the status of any action pending before any of such boards. Any such board newly named by the Legislature shall be the direct and only successor to the board as previously named.

Source: Laws 1927, c. 167, § 12, p. 457; C.S.1929, § 71-302; Laws 1935, c. 142, § 30, p. 530; C.S.Supp.,1941, § 71-302; Laws 1943, c. 150, § 4, p. 540; R.S.1943, § 71-112; Laws 1957, c. 298, § 8, p. 1078; Laws 1961, c. 337, § 6, p. 1053; Laws 1978, LB 406, § 4; Laws 1979, LB 427, § 5; Laws 1981, LB 451, § 3; Laws 1984, LB 481, § 9; Laws 1985, LB 129, § 5; Laws 1986, LB 277, § 5; Laws 1986, LB 286, § 32; Laws 1986, LB 355, § 11; Laws 1986, LB 579, § 24; Laws 1988, LB 557, § 16; Laws 1988, LB 1100, § 8; Laws 1989, LB 342, § 8; Laws 1993, LB 187, § 5; Laws 1993, LB 669, § 6; Laws 1995, LB 406, § 14; Laws 1999, LB 828, § 14; Laws 2000, LB 833, § 1; Laws 2001, LB 270, § 5; Laws 2002, LB 1021, § 7; Laws 2004, LB 1083, § 107; R.S.Supp.,2006, § 71-112; Laws 2007, LB236, § 5; Laws 2007, LB463, § 67; Laws 2009, LB195, § 7.

38-168. Boards; conflict of interest.

The department may establish definitions of conflicts of interest for members of the boards and may establish procedures in the case such a conflict arises. For purposes of this section, conflict of interest includes financial, professional, or personal obligations that may compromise or present the appearance of compromising the judgment of a member in the performance of his or her duties.

Source: Laws 1982, LB 448, § 5; Laws 1987, LB 473, § 10; Laws 1999, LB 828, § 19; R.S.1943, (2003), § 71-115.01; Laws 2007, LB463, § 68.

38-169. Board; organization.

Each board shall organize annually at its first meeting subsequent to December 1 and shall select a chairperson, a vice-chairperson, and a secretary from its own membership.

Source: Laws 1927, c. 167, § 20, p. 459; C.S.1929, § 71-310; R.S.1943, § 71-120; Laws 1999, LB 828, § 24; R.S.1943, (2003), § 71-120; Laws 2007, LB463, § 69.

38-170. Board; business; how transacted.

The department shall, as far as practicable, provide for the conducting of the business of the boards by mail and may hold meetings by teleconference or videoconference subject to the Open Meetings Act. Any official action or vote of the members of a board taken by mail shall be preserved in the records of the department and shall be recorded in the board's minutes by the department.

Source: Laws 1927, c. 167, § 21, p. 459; C.S.1929, § 71-311; Laws 1943, c. 150, § 9, p. 541; R.S.1943, § 71-121; Laws 1978, LB 406, § 8; Laws 1979, LB 427, § 11; Laws 1985, LB 129, § 9; Laws 1986, LB 926, § 8; Laws 1988, LB 1100, § 12; Laws 1997, LB 307, § 114; Laws 1999, LB 828, § 25; Laws 2004, LB 821, § 16; R.S.Supp.,2006, § 71-121; Laws 2007, LB463, § 70.

Cross References

- **Open Meetings Act**, see section 84-1407.

38-171. Board; advisory committee or body; compensation; limitation; expenses.

Each member of a board shall, in addition to necessary traveling and lodging expenses, receive a per diem for each day actually engaged in the discharge of his or her duties, including compensation for the time spent in traveling to and from the place of conducting business. Traveling and lodging expenses shall be on the same basis as provided in sections 81-1174 to 81-1177. The compensation per day shall not exceed fifty dollars and shall be determined by each board with the approval of the department. Persons serving on an advisory committee or body under section 38-161 shall receive remuneration of expenses as provided in sections 81-1174 to 81-1177, including compensation for time spent in traveling to and from the place of conducting business, and a per diem of fifty dollars.

Source: Laws 1927, c. 167, § 22, p. 459; Laws 1929, c. 161, § 1, p. 556; C.S.1929, § 71-312; Laws 1935, c. 142, § 32, p. 531; C.S.Supp.,1941, § 71-312; R.S.1943, § 71-122; Laws 1955, c. 270, § 1, p. 849; Laws 1957, c. 298, § 11, p. 1079; Laws 1959, c. 318, § 1, p. 1165; Laws 1961, c. 337, § 7, p. 1053; Laws 1965, c. 410, § 1, p. 1315; Laws 1967, c. 438, § 1, p. 1347; Laws 1967, c. 439, § 16, p. 1364; Laws 1969, c. 561, § 1, p. 2287; Laws 1971, LB 587, § 5; Laws 1972, LB 1385, § 1; Laws 1978, LB 406, § 9; Laws 1979, LB 427, § 12; Laws 1981, LB 451, § 5; Laws 1981, LB 204, § 108; Laws 1984, LB 481, § 13; Laws 1985, LB 129, § 10; Laws 1986, LB 926, § 10; Laws 1999, LB 828, § 27; Laws 2003, LB 242, § 17; R.S.1943, (2003), § 71-122; Laws 2007, LB463, § 71.

38-172. Board; national organization or related meetings; attendance.

Each board may select one or more of its members to attend the annual meeting of the national organization of state boards of such profession or other related meetings. Any member so selected shall receive his or her necessary traveling and lodging expenses in attending such meetings on the same basis as provided in sections 81-1174 to 81-1177.

Source: Laws 1927, c. 167, § 24, p. 460; C.S.1929, § 71-314; R.S.1943, § 71-124; Laws 1971, LB 587, § 7; Laws 1981, LB 204, § 110; Laws 1986, LB 926, § 12; Laws 1999, LB 828, § 29; R.S.1943, (2003), § 71-124; Laws 2007, LB463, § 72.

38-173. Board; liability; exemption; when.

No member of a board, no expert retained by the department, and no member of a profession 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.

Source: Laws 1976, LB 877, § 24; Laws 1986, LB 286, § 71; Laws 1986, LB 579, § 63; Laws 1996, LB 1044, § 398; Laws 1999, LB 828, § 52; R.S.1943, (2003), § 71-161.19; Laws 2007, LB463, § 73.

38-174. Department; responsibilities; costs; how paid.

The department shall be responsible for the general administration of the activities of each of the boards. The cost of operation and administration of the boards shall be paid from the General Fund and the Professional and Occupational Credentialing Cash Fund.

Source: Laws 1972, LB 1385, § 3; Laws 1980, LB 958, § 1; Laws 1980, LB 847, § 1; Laws 1986, LB 926, § 9; Laws 1991, LB 10, § 1; Laws 1997, LB 307, § 115; Laws 1999, LB 828, § 26; Laws 2003, LB 242, § 16; Laws 2005, LB 256, § 20; R.S.Supp.,2006, § 71-121.01; Laws 2007, LB296, § 300; Laws 2007, LB463, § 74.

38-175. Licensee Assistance Program; authorized; participation; immunity from liability; confidentiality; referral; limitation.

(1) The department may contract to provide a Licensee Assistance Program to credential holders regulated by the department. The program shall be limited to providing education, referral assistance, and monitoring of compliance with treatment for abuse of, dependence on, or active addiction to alcohol, any controlled substance, or any mind-altering substance and shall be limited to voluntary participation by credential holders.

(2)(a) Participation in the program shall be confidential, except that if any evaluation by the program determines that the abuse, dependence, or active addiction may be of a nature which constitutes a danger to the public health and safety by the person's continued practice or if the person fails to comply with any term or condition of a treatment plan, the program shall report the same to the director.

(b) Participation in the program shall not preclude the investigation of alleged statutory violations which could result in disciplinary action against the person's credential or criminal action against the person.

(3) Any report from any person or from the program to the department indicating that a credential holder is suffering from abuse of, dependence on, or active addiction to alcohol, any controlled substance, or any mind-altering substance that impairs the ability to practice the profession shall be treated as a complaint against such credential and shall subject such credential holder to discipline under sections 38-186 to 38-1,100.

(4) No person who makes such a report to the program or from the program to the department shall be liable in damages to any person for slander, libel, defamation of character, breach of any privileged communication, or other criminal or civil action of any nature, whether direct or derivative, for making such report or providing information to the program or department in accordance with this section. The identity of any person making such a report or providing information leading to the making of a report shall be confidential.

(5) Any person who contacts the department for information on or assistance in obtaining referral or treatment of himself or herself or any other person credentialed by the department for abuse of, dependence on, or active addiction to alcohol, any controlled substance, or any mind-altering substance that impairs the ability to practice the profession shall be referred to the program. Such inquiries shall not be used by the department as the basis for investigation for disciplinary action, except that such limitation shall not apply to complaints or any other reports or inquiries made to the department concerning persons who may be suffering from abuse of, dependence on, or active addiction to alcohol, any controlled substance, or any mind-altering substance that impairs the ability to practice the profession or when a complaint has been filed or an investigation or disciplinary or other administrative proceeding is in process.

Source: Laws 1991, LB 456, § 8; Laws 1994, LB 1223, § 13; Laws 1996, LB 1044, § 403; Laws 1997, LB 307, § 121; Laws 2001, LB 398, § 25; Laws 2003, LB 242, § 31; R.S.1943, (2003), § 71-172.01; Laws 2007, LB296, § 322; Laws 2007, LB463, § 75; Laws 2016, LB750, § 3.

38-176. Director; jurisdiction of proceedings; grounds for denial of credential.

(1) The director shall have jurisdiction of proceedings (a) to deny the issuance of a credential, (b) to refuse renewal of a credential, and (c) to discipline a credential holder.

(2) Except as otherwise provided in section 38-1,119, if an applicant for an initial credential or for renewal of a credential to practice a profession does not meet all of the requirements for the credential, the department shall deny issuance or renewal of the credential.

Source: Laws 2007, LB463, § 76.

38-177. Disciplinary actions; terms, defined.

For purposes of sections 38-178, 38-179, and 38-184:

(1) Confidential information means information protected as privileged under applicable law;

(2) Conviction means a plea or verdict of guilty or a conviction following a plea of nolo contendere or non vult contendere made to a formal criminal charge or a judicial finding of guilt irrespective of the pronouncement of judgment or the suspension thereof and includes instances in which the imposition or the execution of sentence is suspended following a judicial finding of guilt and the defendant is placed on probation; and

(3) Pattern of incompetent or negligent conduct means a continued course of incompetent or negligent conduct in performing the duties of the profession.

Source: Laws 1976, LB 877, § 6; Laws 1978, LB 748, § 36; Laws 1986, LB 318, § 142; Laws 1988, LB 693, § 1; Laws 1988, LB 1100, § 21; R.S.1943, (2003), § 71-161.01; Laws 2007, LB463, § 77.

38-178. Disciplinary actions; grounds.

Except as otherwise provided in sections 38-1,119 to 38-1,123, a credential to practice a profession may be denied, refused renewal, or have other disciplinary measures taken against it in accordance with section 38-185 or 38-186 on any of the following grounds:

(1) Misrepresentation of material facts in procuring or attempting to procure a credential;

(2) Immoral or dishonorable conduct evidencing unfitness to practice the profession in this state;

(3) Abuse of, dependence on, or active addiction to alcohol, any controlled substance, or any mind-altering substance;

(4) Failure to comply with a treatment program or an aftercare program, including, but not limited to, a program entered into under the Licensee Assistance Program established pursuant to section 38-175;

(5) Conviction of (a) a misdemeanor or felony under Nebraska law or federal law, or (b) a crime in any jurisdiction which, if committed within this state, would have constituted a misdemeanor or felony under Nebraska law and which has a rational connection with the fitness or capacity of the applicant or credential holder to practice the profession;

(6) Practice of the profession (a) fraudulently, (b) beyond its authorized scope, (c) with gross incompetence or gross negligence, or (d) in a pattern of incompetent or negligent conduct;

- (7) Practice of the profession while the ability to practice is impaired by alcohol, controlled substances, drugs, mind-altering substances, physical disability, mental disability, or emotional disability;
- (8) Physical or mental incapacity to practice the profession as evidenced by a legal judgment or a determination by other lawful means;
- (9) Illness, deterioration, or disability that impairs the ability to practice the profession;
- (10) Permitting, aiding, or abetting the practice of a profession or the performance of activities requiring a credential by a person not credentialed to do so;
- (11) Performing or offering to perform scleral tattooing as defined in section 38-10,172 by a person not credentialed to do so;
- (12) Having had his or her credential denied, refused renewal, limited, suspended, revoked, or disciplined in any manner similar to section 38-196 by another state or jurisdiction based upon acts by the applicant or credential holder similar to acts described in this section;
- (13) Use of untruthful, deceptive, or misleading statements in advertisements, including failure to comply with section 38-124;
- (14) Conviction of fraudulent or misleading advertising or conviction of a violation of the Uniform Deceptive Trade Practices Act;
- (15) Distribution of intoxicating liquors, controlled substances, or drugs for any other than lawful purposes;
- (16) Violations of the Uniform Credentialing Act or the rules and regulations relating to the particular profession;
- (17) Unlawful invasion of the field of practice of any profession regulated by the Uniform Credentialing Act which the credential holder is not credentialed to practice;
- (18) Violation of the Uniform Controlled Substances Act or any rules and regulations adopted pursuant to the act;
- (19) Failure to file a report required by section 38-1,124, 38-1,125, or 71-552;
- (20) Failure to maintain the requirements necessary to obtain a credential;
- (21) Violation of an order issued by the department;
- (22) Violation of an assurance of compliance entered into under section 38-1,108;
- (23) Failure to pay an administrative penalty;
- (24) Unprofessional conduct as defined in section 38-179; or
- (25) Violation of the Automated Medication Systems Act.

Source: Laws 1927, c. 167, § 46, p. 466; C.S.1929, § 71-601; Laws 1943, c. 150, § 10, p. 541; R.S.1943, § 71-147; Laws 1976, LB 877, § 1; Laws 1979, LB 95, § 1; Laws 1986, LB 286, § 45; Laws 1986, LB 579, § 37; Laws 1986, LB 926, § 24; Laws 1987, LB 473, § 15; Laws 1988, LB 1100, § 16; Laws 1991, LB 456, § 7; Laws 1992, LB 1019, § 37; Laws 1993, LB 536, § 44; Laws 1994, LB 1210, § 25; Laws 1994, LB 1223, § 6; Laws 1997, LB 622, § 79; Laws 1999, LB 366, § 8; Laws 2001, LB 398, § 20; Laws 2005, LB 301, § 9; R.S.Supp.,2006, § 71-147; Laws 2007, LB463, § 78; Laws 2008, LB308, § 10; Laws 2011, LB591, § 2; Laws 2015, LB452, § 2; Laws 2019, LB449, § 1.

Effective Date: September 1, 2019

Cross References

- **Automated Medication Systems Act**, see section 71-2444.
- **Uniform Controlled Substances Act**, see section 28-401.01.
- **Uniform Deceptive Trade Practices Act**, see section 87-306.

Annotations

- "Grossly immoral" and "dishonorable" conduct under subdivision (2) of this section contemplates conduct that shows that a person guilty of it either is intellectually or morally incompetent to practice the profession or morally incompetent to practice the profession or has committed an act or acts of a nature likely to jeopardize the interest of the public; it does not authorize revocation for trivial reasons or for a mere breach of the generally accepted ethics of the profession. *Poor v. State*, 266 Neb. 183, 663 N.W.2d 109 (2003).
- Pursuant to subsection (5)(d) of this section (subdivision (6)(d) of section 38-178), a district court is correct in concluding that a record lacks the quantum of evidence necessary to support a reasonable inference that a physician was grossly incompetent in treatment of a patient when: Experts testified that they would have found other procedures preferable, assessed the situation more thoroughly, or acted earlier in the course of treatment; experts agreed that the physician's actions were not contrary to the indications and information he or she had received at the time; and positive assessments of the physician's basic skill level were not contradicted by any evidence in the record. Pursuant to subsection (5)(d) of this section (subdivision (6)(d) of section 38-178), the term "gross incompetence" connotes such an extreme deficiency on the part of a physician in the basic knowledge and skill necessary for diagnosis and treatment that one may reasonably question the physician's ability to practice medicine at the threshold level of professional competence. *Langvardt v. Horton*, 254 Neb. 878, 581 N.W.2d 60 (1998).

- Under subsection (10) of this section (as it existed in 1993), the word "includes" is restricted by the language which specifies the sources referred to. Thus, a violation of standards of the medical profession not defined by the statute or rules and regulations does not define unprofessional conduct for the purposes of the statute. *Curry v. State ex rel. Stenberg*, 242 Neb. 695, 496 N.W.2d 512 (1993).
- Section is permissive, revocation following conviction for a serious criminal act was not abuse of discretion. *State ex rel. Meyer v. Eymen*, 184 Neb. 848, 172 N.W.2d 617 (1969).
- A physician's license may be revoked for unprofessional conduct before conviction in a competent court. *Mathews v. Hedlund*, 82 Neb. 825, 119 N.W. 17 (1908).
- In proceedings to revoke a physician's license on grounds of producing a criminal abortion, trial and conviction of such a charge by a competent court is not a condition precedent to said proceedings. *Munk v. Frink*, 81 Neb. 631, 116 N.W. 525 (1908), 17 L.R.A.N.S. 439 (1908).
- State does not have to prove that a federal felony conviction under subsection (4) of this section (subdivision (5) of section 38-178) is also a violation of Nebraska law. *Sedivy v. State ex rel. Stenberg*, 5 Neb. App. 745, 567 N.W.2d 784 (1997).
- The judiciary will not interfere with executive officers in the performance of duties which are discretionary in their nature or involve the exercise of judgment; there exists no power in the courts to act upon the officer so as to interfere with the exercise of that judgment while the matter is properly before the officer for action. *Roseberry v. Wright*, 2 Neb. App. 248, 508 N.W.2d 867 (1993).

38-179. Disciplinary actions; unprofessional conduct, defined.

For purposes of section 38-178, unprofessional conduct means any departure from or failure to conform to the standards of acceptable and prevailing practice of a profession or the ethics of the profession, regardless of whether a person, consumer, or entity is injured, or conduct that is likely to deceive or defraud the public or is detrimental to the public interest, including, but not limited to:

- (1) Receipt of fees on the assurance that an incurable disease can be permanently cured;
- (2) Division of fees, or agreeing to split or divide the fees, received for professional services with any person for bringing or referring a consumer other than (a) with a partner or employee of the applicant or credential holder or his or her office or clinic, (b) with a landlord of the applicant or credential holder pursuant to a written agreement that provides for payment of rent based on gross receipts, (c) with a former partner or employee of the applicant or credential holder based on a retirement plan or separation agreement, or (d) by a person credentialed pursuant to the Water Well Standards and Contractors' Practice Act;
- (3) Obtaining any fee for professional services by fraud, deceit, or misrepresentation, including, but not limited to, falsification of third-party claim documents;
- (4) Cheating on or attempting to subvert the credentialing examination;
- (5) Assisting in the care or treatment of a consumer without the consent of such consumer or his or her legal representative;
- (6) Use of any letters, words, or terms, either as a prefix, affix, or suffix, on stationery, in advertisements, or otherwise, indicating that such person is entitled to practice a profession for which he or she is not credentialed;
- (7) Performing, procuring, or aiding and abetting in the performance or procurement of a criminal abortion;
- (8) Knowingly disclosing confidential information except as otherwise permitted by law;
- (9) Commission of any act of sexual abuse, misconduct, or exploitation related to the practice of the profession of the applicant or credential holder;
- (10) Failure to keep and maintain adequate records of treatment or service;
- (11) Prescribing, administering, distributing, dispensing, giving, or selling any controlled substance or other drug recognized as addictive or dangerous for other than a medically accepted therapeutic purpose;
- (12) Prescribing any controlled substance to (a) oneself or (b) except in the case of a medical emergency (i) one's spouse, (ii) one's child, (iii) one's parent, (iv) one's sibling, or (v) any other person living in the same household as the prescriber;
- (13) Failure to comply with any federal, state, or municipal law, ordinance, rule, or regulation that pertains to the applicable profession;
- (14) Disruptive behavior, whether verbal or physical, which interferes with consumer care or could reasonably be expected to interfere with such care; and
- (15) Such other acts as may be defined in rules and regulations.

Nothing in this section shall be construed to exclude determination of additional conduct that is unprofessional by adjudication in individual contested cases.

Source: Laws 1927, c. 167, § 47, p. 466; C.S.1929, § 71-602; Laws 1935, c. 141, § 1, p. 518; C.S.Supp.,1941, § 71-602; Laws 1943, c. 146, § 11, p. 542; R.S.1943, § 71-148; Laws 1979, LB 95, § 2; Laws 1981, LB 466, § 1; Laws 1986, LB 286, § 46; Laws 1986, LB 579, § 38; Laws 1986, LB 926, § 25; Laws 1987, LB 473, § 16; Laws 1988, LB 273, § 9; Laws 1988, LB 1100, § 17; Laws 1991, LB 425, § 11; Laws 1991, LB 456, § 11; Laws 1993, LB 536, § 45; Laws 1994, LB 1210, § 27; Laws 1997, LB 23, § 5; R.S.1943, (2003), § 71-148; Laws 2007, LB463, § 79.

Cross References

- **Water Well Standards and Contractors' Practice Act**, see section 46-1201.

Annotations

- Under the former law, the general definition in the introductory paragraph of this section does not include as unprofessional conduct a single act of ordinary negligence. *Mahnke v. State*, 276 Neb. 57, 751 N.W.2d 635 (2008).
- Performance of a criminal abortion is immoral, unprofessional, and dishonorable conduct justifying revocation of license to practice medicine and surgery. *State ex rel. Sorensen v. Lake*, 121 Neb. 331, 236 N.W. 762 (1931).
- Disclosure by a physician of the contagious or infectious nature of a patient's disease to a person who might become exposed is not a betrayal of a professional secret which will constitute unprofessional conduct. *Simonsen v. Swenson*, 104 Neb. 224, 177 N.W. 831 (1920), 9 A.L.R. 1250 (1920).

38-180. Disciplinary actions; evidence of discipline by another state or jurisdiction.

For purposes of subdivision (12) of section 38-178, a certified copy of the record of denial, refusal of renewal, limitation, suspension, or revocation of a license, certificate, registration, or other similar credential or the taking of other disciplinary measures against it by another state or jurisdiction shall be conclusive evidence of a violation.

Source: Laws 2007, LB463, § 80; Laws 2019, LB449, § 2.

Effective Date: September 1, 2019

38-181. Initial credential to operate business; renewal of credential; denial by department; powers of department.

If an applicant for an initial credential to operate a business does not meet all of the requirements for the credential, the department shall deny issuance of the credential. If an applicant for an initial credential to operate a business or a credential holder applying for renewal of the credential to operate a business has committed any of the acts set out in section 38-182, the department may deny issuance or refuse renewal of the credential or may issue or renew the credential subject to any of the terms imposed under section 38-196 in order to protect the public.

Source: Laws 2007, LB463, § 81.

38-182. Disciplinary actions; credential to operate business; grounds.

A credential to operate a business may be denied, refused renewal, or have disciplinary measures taken against it in accordance with section 38-196 on any of the following grounds:

- (1) Violation of the Uniform Credentialing Act or the rules and regulations adopted and promulgated under such act relating to the applicable business;
- (2) Committing or permitting, aiding, or abetting the commission of any unlawful act;
- (3) Conduct or practices detrimental to the health or safety of an individual served or employed by the business;
- (4) Failure to allow an agent or employee of the department access to the business for the purposes of inspection, investigation, or other information collection activities necessary to carry out the duties of the department;
- (5) Discrimination or retaliation against an individual served or employed by the business who has submitted a complaint or information to the department or is perceived to have submitted a complaint or information to the department; or
- (6) Failure to file a report required by section 71-552.

Source: Laws 2007, LB463, § 82; Laws 2011, LB591, § 3.

38-183. Credential issued by department; temporary suspension or limitation; notice and hearing not required; when; duration.

(1) The department may temporarily suspend or temporarily limit any credential issued by the department without notice or a hearing if the director determines that there is reasonable cause to believe that grounds exist under section 38-178 or 38-182 for the revocation, suspension, or limitation of the credential and that the credential holder's continuation in practice or operation would constitute an imminent danger to the public health and safety. Simultaneously with any such action, the department shall institute proceedings for a hearing on the grounds for revocation, suspension, or limitation of the credential. Such hearing shall be held no later than fifteen days from the date of such temporary suspension or temporary limitation of the credential.

(2) A continuance of the hearing shall be granted by the department upon the written request of the credential holder, and such a continuance shall not exceed thirty days unless waived by the credential holder. A temporary suspension or temporary limitation order by the director shall take effect when served upon the credential holder.

(3) In no case shall a temporary suspension or temporary limitation of a credential under this section be in effect for a period of time in excess of ninety days unless waived by the credential holder. If a decision is not reached within ninety days, the credential shall be reinstated unless and until the department reaches a decision to revoke, suspend, or limit the credential or otherwise discipline the credential holder.

Source: Laws 1986, LB 926, § 26; Laws 1991, LB 456, § 10; Laws 1994, LB 1210, § 26; R.S.1943, (2003), § 71-147.02; Laws 2007, LB463, § 83.

38-184. Credential; disciplinary actions; time when taken.

If an applicant for a credential or a credential holder is convicted of an offense for which the credential may be denied or refused renewal or have other disciplinary measures taken against it in accordance with section 38-196, such denial, refusal of renewal, or disciplinary measures may be taken when the time for appeal of the conviction has elapsed or the conviction has been affirmed on appeal or an order granting probation is made suspending the imposition or the execution of sentence, irrespective of any subsequent order under any statute allowing such person to withdraw his or her plea of guilty, nolo contendere, or non vult contendere and to enter a plea of not guilty, or setting aside the verdict of guilty or the conviction, or releasing the person from probation, or dismissing the accusation, information, or indictment.

Source: Laws 2007, LB463, § 84.

38-185. Credential; denial; refuse renewal; notice; hearing.

To deny or refuse renewal of a credential, the department shall notify the applicant or credential holder in writing of the action taken and the reasons for the determination. The denial or refusal to renew shall become final thirty days after mailing the notice unless the applicant or credential holder, within such thirty-day period, requests a hearing in writing. The hearing shall be conducted in accordance with the Administrative Procedure Act.

Source: Laws 1927, c. 167, § 49, p. 467; C.S.1929, § 71-604; R.S.1943, § 71-150; Laws 1986, LB 286, § 48; Laws 1986, LB 579, § 40; Laws 1988, LB 1100, § 19; Laws 1991, LB 456, § 12; Laws 1994, LB 1210, § 29; Laws 1996, LB 1044, § 382; R.S.1943, (2003), § 71-150; Laws 2007, LB296, § 304; Laws 2007, LB463, § 85.

Cross References

- **Administrative Procedure Act**, see section 84-920.

Annotations

- The judiciary will not interfere with executive officers in the performance of duties which are discretionary in their nature or involve the exercise of judgment; there exists no power in the courts to act upon the officer so as to interfere with the exercise of that judgment while the matter is properly before the officer for action. *Roseberry v. Wright*, 2 Neb. App. 248, 508 N.W.2d 867 (1993).

38-186. Credential; discipline; petition by Attorney General; hearing; department; powers and duties.

(1) A petition shall be filed by the Attorney General in order for the director to discipline a credential obtained under the Uniform Credentialing Act to:

(a) Practice or represent oneself as being certified under any of the practice acts enumerated in subdivisions (1) through (19) and (21) through (35) of section 38-101; or

(b) Operate as a business for the provision of services in body art; cosmetology; emergency medical services; esthetics; funeral directing and embalming; massage therapy; and nail technology in accordance with subsection (3) of section 38-121.

(2) The petition shall be filed in the office of the director. The department may withhold a petition for discipline or a final decision from public access for a period of five days from the date of filing the petition or the date the decision is entered or until service is made, whichever is earliest.

(3) The proceeding shall be summary in its nature and triable as an equity action and shall be heard by the director 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.

Source: Laws 2007, LB463, § 86; Laws 2012, LB831, § 28; Laws 2017, LB88, § 34; Laws 2017, LB255, § 10.

38-187. Credential; discipline; petition; form; other pleadings.

The following rules shall govern the form of the petition in cases brought pursuant to section 38-186:

- (1) The state shall be named as plaintiff and the credential holder as defendant;
- (2) The charges against the credential holder shall be stated with reasonable definiteness;
- (3) Amendments may be made as in ordinary actions in the district court; and
- (4) All allegations shall be deemed denied, but the credential holder may plead thereto if he or she desires.

Source: Laws 1927, c. 167, § 51, p. 467; C.S.1929, § 71-606; R.S.1943, § 71-152; Laws 1986, LB 286, § 50; Laws 1986, LB 579, § 42; Laws 1994, LB 1210, § 31; R.S.1943, (2003), § 71-152; Laws 2007, LB463, § 87.

Annotations

- Under former law, the complaint was sufficient if it informed the accused of the nature of the wrong laid to his charge and of the particular instance of its perpetration. *Munk v. Frink*, 75 Neb. 172, 106 N.W. 425 (1905).

38-188. Credential; discipline; hearing; time; place.

Upon presentation of the petition to the director, he or she shall make an order fixing the time and place for the hearing, which shall not be less than thirty nor more than sixty days thereafter.

Source: Laws 1927, c. 167, § 52, p. 468; C.S.1929, § 71-607; R.S.1943, § 71-153; Laws 1986, LB 926, § 27; Laws 1996, LB 1044, § 383; R.S.1943, (2003), § 71-153; Laws 2007, LB296, § 306; Laws 2007, LB463, § 88.

38-189. Credential; discipline; hearing; notice; how served.

Notice of the filing of a petition pursuant to section 38-186 and of the time and place of hearing shall be served upon the credential holder at least ten days before the hearing. The notice may be served by any method specified in section 25-505.01, or the director 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.

Source: Laws 1927, c. 167, § 53, p. 468; C.S.1929, § 71-608; R.S.1943, § 71-154; Laws 1986, LB 286, § 51; Laws 1986, LB 579, § 43; Laws 1991, LB 456, § 13; Laws 1994, LB 1210, § 32; R.S.1943, (2003), § 71-154; Laws 2007, LB463, § 89.

38-190. Petition for disciplinary action; disposition prior to order; methods; Attorney General; duties.

(1) Any petition filed pursuant to section 38-186 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 board 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 as provided in subsection (1) of this section, the credential holder shall also be provided a copy of the input and opportunity to respond in such manner as the director determines.

Source: Laws 1976, LB 877, § 8; Laws 1988, LB 1100, § 22; Laws 1991, LB 456, § 16; Laws 1994, LB 1223, § 8; Laws 1996, LB 1044, § 389; Laws 1999, LB 828, § 44; R.S.1943, (2003), § 71-161.03; Laws 2007, LB296, § 311; Laws 2007, LB463, § 90.

38-191. Credential; disciplinary action; hearing; failure to appear; effect.

If a credential holder fails to appear, either in person or by counsel, at the time and place designated in the notice required by section 38-189, the director, after receiving satisfactory evidence of the truth of the charges, shall order the credential revoked or suspended or shall take any or all of the other appropriate disciplinary measures authorized by section 38-196 against the credential.

Source: Laws 1927, c. 167, § 55, p. 468; C.S.1929, § 71-610; R.S.1943, § 71-156; Laws 1976, LB 877, § 4; Laws 1986, LB 286, § 54; Laws 1986, LB 579, § 46; Laws 1994, LB 1210, § 34; Laws 1996, LB 1044, § 385; R.S.1943, (2003), § 71-156; Laws 2007, LB296, § 309; Laws 2007, LB463, § 91.

38-192. Credential; disciplinary action; director; sanctions; powers.

If the director determines upon completion of a hearing under section 38-186 that a violation has occurred, the director may, at his or her discretion, consult with the appropriate board concerning sanctions to be imposed or terms and conditions of the sanctions. When the director consults with a board, the credential holder and the Attorney General shall be provided with a copy of the director's request, the recommendation of the board, and an opportunity to respond in such manner as the director determines. The director shall have the authority through entry of an order to exercise in his or her discretion any or all of the sanctions authorized under section 38-196.

Source: Laws 2007, LB463, § 92.

38-193. Credential; disciplinary action; partial-birth abortion; director; powers and duties.

If the petition is brought with respect to subdivision (3) of section 38-2021, the director shall 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. The director shall have the authority through entry of an order to exercise in his or her discretion any or all of the sanctions authorized under section 38-196, irrespective of the petition.

Source: Laws 2007, LB463, § 93.

38-194. Credential; disciplinary action; costs; how taxed.

If the order issued regarding discipline of a credential is adverse to the credential holder, the costs shall be charged to him or her as in ordinary civil actions in the district court, but if the state is the unsuccessful party, the costs shall be paid out of any money in the Professional and Occupational Credentialing Cash Fund available for that purpose. Witness fees and costs may be taxed according to the rules prevailing in the district court.

Source: Laws 1927, c. 167, § 56, p. 468; C.S.1929, § 71-611; R.S.1943, § 71-157; Laws 1986, LB 286, § 55; Laws 1986, LB 579, § 47; Laws 1994, LB 1210, § 35; Laws 1996, LB 1044, § 386; Laws 1997, LB 307, § 118; Laws 2003, LB 242, § 21; R.S.1943, (2003), § 71-157; Laws 2007, LB463, § 94.

38-195. Credential; disciplinary action; costs; when not collectible; how paid.

All costs accrued at the instance of the state when it is the successful party in a proceeding to discipline a credential, which the Attorney General certifies cannot be collected from the defendant, shall be paid out of any available funds in the Professional and Occupational Credentialing Cash Fund.

Source: Laws 1927, c. 167, § 57, p. 468; C.S.1929, § 71-612; R.S.1943, § 71-158; Laws 1996, LB 1044, § 387; Laws 1997, LB 307, § 119; Laws 2003, LB 242, § 22; R.S.1943, (2003), § 71-158; Laws 2007, LB463, § 95.

38-196. Credential; disciplinary action; sanctions authorized.

Upon the completion of any hearing held regarding discipline of a credential, the director may dismiss the action or impose any of the following sanctions:

- (1) Censure;
- (2) Probation;
- (3) Limitation;
- (4) Civil penalty;
- (5) Suspension; or
- (6) Revocation.

Source: Laws 1927, c. 167, § 54, p. 468; C.S.1929, § 71-609; Laws 1943, c. 150, § 13, p. 544; R.S.1943, § 71-155; Laws 1976, LB 877, § 3; Laws 1984, LB 481, § 20; Laws 1986, LB 286, § 52; Laws 1986, LB 579, § 44; Laws 1986, LB 926, § 28; Laws 1988, LB 1100, § 20; Laws 1991, LB 456, § 14; Laws 1994, LB 1210, § 33; Laws 1994, LB 1223, § 7; Laws 1996, LB 1044, § 384; Laws 1997, LB 23, § 6; Laws 1999, LB 828, § 43; R.S.1943, (2003), § 71-155; Laws 2007, LB296, § 307; Laws 2007, LB463, § 96.

Annotations

- While a \$10,000 fine imposed under this section may well serve a punitive purpose in certain cases, it will not be assumed in a vacuum that a potential fine not actually imposed could serve only primarily punitive purposes. *State v. Wolf*, 250 Neb. 352, 549 N.W.2d 183 (1996).
- The power of courts to review the action of a professional board of examiners in its refusal to recommend reinstatement of a revoked license is not decided, but if such power exists, it is limited to a determination based on whether or not the board's action was arbitrary or capricious. *Coil v. Department of Health*, 189 Neb. 606, 204 N.W.2d 167 (1973).
- Summary equity proceeding for revocation of physician's license was sustained. *State ex rel. Sorensen v. Lake*, 121 Neb. 331, 236 N.W. 762 (1931).

- Under former law, proceedings before the state board were summary in nature and technical rules for trial were disregarded. *Munk v. Frink*, 81 Neb. 631, 116 N.W. 525 (1908), 17 L.R.A.N.S. 439 (1908).

38-197. Credential; disciplinary action; additional terms and conditions of discipline.

If any discipline is imposed pursuant to section 38-196, the director may, in addition to any other terms and conditions of that discipline:

(1) Require the credential holder to obtain additional professional training and to pass an examination upon the completion of the training. The examination may be written or oral or both and may be a practical or clinical examination or both or any or all of such combinations of written, oral, practical, and clinical, at the option of the director;

(2) Require the credential holder to submit to a complete diagnostic examination by one or more physicians or other qualified professionals appointed by the director. If the director requires the credential holder to submit to such an examination, the director shall receive and consider any other report of a complete diagnostic examination given by one or more physicians or other qualified professionals of the credential holder's choice if the credential holder chooses to make available such a report or reports by his or her physician or physicians or other qualified professionals; and

(3) Limit the extent, scope, or type of practice of the credential holder.

Source: Laws 1976, LB 877, § 7; Laws 1986, LB 286, § 56; Laws 1986, LB 579, § 48; Laws 1991, LB 456, § 15; Laws 1994, LB 1210, § 36; Laws 1996, LB 1044, § 388; R.S.1943, (2003), § 71-161.02; Laws 2007, LB296, § 310; Laws 2007, LB463, § 97.

38-198. Civil penalty; manner of collection; attorney's fees and costs; disposition.

If a civil penalty is imposed pursuant to section 38-196, it shall not exceed twenty thousand dollars. Any civil penalty assessed and unpaid 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 may also collect in such action attorney's fees and costs incurred in the collection of the civil penalty. The department shall, within thirty days from receipt, remit any collected civil penalty to the State Treasurer to be disposed of in accordance with Article VII, section 5, of the Constitution of Nebraska.

Source: Laws 1986, LB 926, § 29; R.S.1943, (2003), § 71-155.03; Laws 2007, LB463, § 98.

38-199. Credential; disciplinary action; suspension; effect.

If suspension is imposed pursuant to section 38-196, the credential holder shall not engage in the practice of a profession during the time for which the 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 credential shall be (1) automatically reinstated upon expiration of such period, (2) reinstated if the terms and conditions as set by the director are satisfied, or (3) reinstated subject to probation or limitations or conditions upon the practice of the credential holder.

Source: Laws 2007, LB463, § 99.

38-1,100. Credential; disciplinary action; revocation; effect.

If revocation is imposed pursuant to section 38-196, the credential holder shall not engage in the practice of the profession after a credential to practice such profession 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 38-148.

Source: Laws 2007, LB463, § 100.

38-1,101. Contested cases; chief medical officer; duties.

If a chief medical officer is appointed pursuant to section 81-3115, he or she shall perform the duties of the director for decisions in contested cases under the Uniform Credentialing Act other than contested cases under sections 38-1,119 to 38-1,123.

Source: Laws 1997, LB 622, § 78; Laws 2001, LB 398, § 21; Laws 2003, LB 245, § 11; R.S.1943, (2003), § 71-155.01; Laws 2007, LB296, § 308; Laws 2007, LB463, § 101.

38-1,102. Appeal; procedure.

Both parties to disciplinary proceedings under the Uniform Credentialing Act shall have the right of appeal, and the appeal shall be in accordance with the Administrative Procedure Act. The case shall be heard at a time fixed by the district court. It shall be advanced and take precedence over all other cases upon the court calendar except worker's compensation and criminal cases.

Source: Laws 1927, c. 167, § 58, p. 469; C.S.1929, § 71-613; Laws 1943, c. 150, § 14, p. 544; R.S.1943, § 71-159; Laws 1976, LB 877, § 5; Laws 1988, LB 352, § 113; R.S.1943, (2003), § 71-159; Laws 2007, LB463, § 102.

Cross References

- **Administrative Procedure Act**, see section 84-920.

Annotations

- The power of courts to review the action of a professional board of examiners in its refusal to recommend reinstatement of a revoked license is not decided, but if such power exists, it is limited to a determination based on whether or not the board's action was arbitrary or capricious. *Coil v. Department of Health*, 189 Neb. 606, 204 N.W.2d 167 (1973).

38-1,103. Consultant to department from board; authorized.

A 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.

Source: Laws 2007, LB463, § 103.

38-1,104. Complaint; decision not to investigate; notice; review; notice to credential holder; when.

(1) 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 board may review the complaint and provide its recommendation to the department on whether the complaint merits investigation.

(2) The department shall notify the credential holder 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.

Source: Laws 2007, LB463, § 104.

38-1,105. Investigations; department; progress reports to appropriate board; board review; board; powers and duties; review by Attorney General; meetings in closed session.

(1) The department shall advise the appropriate board on the progress of investigations. If requested by the complainant, the identity of the complainant shall not be released to the board.

(2) 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 credential holder that may be relevant to the investigation, except that (a) 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 (b) 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.

(3) 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 any statute, rule, or regulation 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.

(4) 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.

(5) All meetings of the 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 2007, LB463, § 105.

38-1,106. Reports, complaints, and records not public records; limitations on use; prohibited disclosure; penalty; application material; how treated; confidentiality.

(1) Reports under sections 38-1,129 to 38-1,136, complaints, and 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 reports, 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 board, having access to such reports, 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.

(2) Investigational records, reports, and files pertaining to an application for a credential 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.

(3) The identity of any person making a report, providing information leading to the making of a report, or otherwise providing information to the department, a board, or the Attorney General included in such reports, complaints, or investigational records shall be confidential whether or not the record of the investigation becomes a public record.

Source: Laws 2007, LB463, § 106; Laws 2016, LB750, § 4.

Annotations

- The evidentiary privilege under this section belongs to the Department of Health and Human Services, not the credential holder, and is limited to protecting the department's incident reports, complaints, and investigatory records when they are not included in a contested hearing. It does not preclude discovery of information available independent of the department's investigation. *Stetson v. Silverman*, 278 Neb. 389, 770 N.W.2d 632 (2009).

38-1,107. Violations; department; Attorney General; powers and duties; applicability of section.

(1) Except as provided in subsection (2) of this section, 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 a credential holder. The Attorney General shall then determine which, if any, statutes, rules, or regulations the credential holder has violated and the appropriate legal action to take. The Attorney General may (a) elect to file a petition under section 38-186 or not to file a petition, (b) negotiate a voluntary surrender or voluntary limitation pursuant to section 38-1,109, or (c) in cases involving a minor or insubstantial violation, refer the matter to the appropriate board for the opportunity to resolve the matter by recommending to the Attorney General that he or she enter into an assurance of compliance with the credential holder in lieu of filing a petition. An assurance of compliance shall not constitute discipline against a credential holder.

(2) This section does not apply to the following professions or businesses: Asbestos abatement, inspection, project design, and training; lead-based paint abatement, inspection, project design, and training; medical radiography; radon detection, measurement, and mitigation; water system operation; and constructing or decommissioning water wells and installing water well pumps and pumping equipment.

Source: Laws 1984, LB 481, § 2; Laws 1986, LB 286, § 76; Laws 1986, LB 579, § 68; Laws 1991, LB 456, § 25; Laws 1994, LB 1210, § 52; Laws 1999, LB 828, § 58; R.S.1943, (2003), § 71-171.01; Laws 2007, LB463, § 107.

38-1,108. Referral to board; assurance of compliance; recommendation.

Upon referral of a matter under section 38-1,107 by the Attorney General, the board may:

(1) 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 credential holder 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 credential holder that he or she will not engage in such conduct, and acknowledgment by the credential holder that violation of the assurance constitutes unprofessional conduct. Such assurance shall be signed by the credential holder and shall become a part of the public record of the credential holder. The credential holder shall not be required to admit to any violation of the law, and the assurance shall not be construed as such an admission; or

(2) Recommend that the Attorney General file a petition under section 38-186.

Source: Laws 1991, LB 456, § 26; Laws 1994, LB 1210, § 53; Laws 1997, LB 23, § 7; Laws 1999, LB 828, § 59; R.S.1943, (2003), § 71-171.02; Laws 2007, LB463, § 108.

38-1,109. Credential holder; voluntarily surrender or limit credential; department; powers; written order of director; violation of terms and conditions; effect.

(1) A credential holder may submit to the department an offer to voluntarily surrender or limit any credential issued by the department pursuant to the Uniform Credentialing Act. Any such offer may be made to surrender or limit the credential permanently, for an indefinite period of time, or for a specific or definite period of time. The offer shall be made in writing and shall include (a) the reason for the offer of voluntary surrender or limitation, (b) whether the offer is for a permanent, indefinite, or definite period of time, and (c) any terms and conditions that the credential holder wishes to have the department consider and apply to the voluntary surrender or limitation of the credential.

(2) The department may accept an offer of voluntary surrender or limitation of a credential (a) based on an offer made by the credential holder on his or her own volition, (b) based on an offer made with the agreement of the Attorney General for cases brought under section 38-1,107 or the legal counsel of the department for cases brought under sections 38-1,119 to 38-1,123 to resolve a pending disciplinary matter, (c) in lieu of filing a petition for disciplinary action, or (d) in response to a notice of disciplinary action.

(3) The department may reject an offer of voluntary surrender of a credential under circumstances which include, but are not limited to, when such credential (a) is under investigation, (b) has a disciplinary action pending but a disposition has not been rendered, or (c) has had a disciplinary action taken against it.

(4) In all instances, the decision shall be issued in the form of a written order by the director. The order shall be issued within thirty days after receipt of the offer of voluntary surrender or limitation and shall specify (a) whether the department accepts or rejects the offer of voluntary surrender and (b)(i) the terms and conditions under which the voluntary surrender is accepted or (ii) the basis for a rejection of an offer of voluntary surrender. The terms and conditions governing the acceptance of a voluntary surrender shall include, but not be limited to, the duration of the surrender, whether the credential holder may apply to have the credential reinstated, and any terms and conditions for any such reinstatement.

(5) A limitation may be placed upon the right of the credential holder to practice a profession or operate a business to such extent, for such time, and under such conditions as imposed by the director.

(6) Violation of any of the terms and conditions of a voluntary surrender or limitation by the credential holder shall be due cause for the refusal of renewal of the credential, for the suspension or revocation of the credential, or for refusal to restore the credential.

Source: Laws 1976, LB 877, § 16; Laws 1986, LB 926, § 35; R.S.1943, (2003), § 71-161.11; Laws 2007, LB463, § 109.

38-1,110. Complaint alleging dependence or disability; director; investigation; report; review by board; finding; effect.

(1) When the department has received a complaint or report by any person or any report has been made to the director by the Licensee Assistance Program under section 38-175 alleging that an applicant for a credential or a person credentialed to practice any profession is suffering from abuse of, dependence on, or active addiction to alcohol, any controlled substance, or any mind-altering substance that impairs the ability to practice the profession or illness, deterioration, or disability that impairs the ability to practice the profession, the director shall investigate such complaint to determine if any reasonable cause exists to question the qualification of the applicant or credential holder to practice or to continue to practice such profession.

(2) 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 or credential holder to practice such profession because of abuse of, dependence on, or active addiction to alcohol, any controlled substance, or any mind-altering substance that impairs the ability to practice the profession or illness, deterioration, or disability that impairs the ability to practice the profession, the director shall report such finding and evidence supporting it to the appropriate board.

(3) If such board agrees that reasonable cause exists to question the qualification of such applicant or credential holder, the board shall appoint a committee of three qualified physicians or other qualified professionals to examine the applicant or credential holder and to report their findings and conclusions to the board. The cost of the examination shall be treated as a base cost of credentialing under section 38-152. The board shall then consider the findings and the conclusions of the physicians or other qualified professionals and any other evidence or material which may be submitted to that board by the applicant or credential holder, by the director, or by any other person and shall then determine if the applicant or credential holder is qualified to practice or to continue to practice such profession in the State of Nebraska.

(4) If such board finds the applicant or credential holder to be not qualified to practice or to continue to practice such profession because of abuse of, dependence on, or active addiction to alcohol, any controlled substance, or any mind-altering substance that impairs the ability to practice the profession or illness, deterioration, or disability that impairs the ability to practice the profession, 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 credential. The director shall thereupon deny, refuse renewal of, suspend, or revoke the credential or limit the ability of the credential holder to practice such profession in the state in such manner and to such extent as the director determines to be necessary for the protection of the public.

Source: Laws 1976, LB 877, § 18; Laws 1986, LB 286, § 65; Laws 1986, LB 579, § 57; Laws 1991, LB 456, § 20; Laws 1996, LB 1044, § 393; Laws 1999, LB 828, § 49; Laws 2001, LB 398, § 23; R.S.1943, (2003), § 71-161.13; Laws 2007, LB296, § 315; Laws 2007, LB463, § 110.

38-1,111. Credential; disciplinary action because of physical or mental disability; duration; when issued, returned, or reinstated; manner.

(1) The denial, refusal of renewal, limitation, or suspension of a credential as provided in section 38-1,110 shall continue in effect until reversed on appeal pursuant to section 38-1,113 or until the cause of such denial, refusal of renewal, limitation, or suspension no longer exists and the appropriate board finds, upon competent examination or evaluation by a qualified physician or other qualified professional selected or approved by the department, that the applicant or credential holder is qualified to engage in the practice of the profession. The cost of the examination or evaluation shall be paid by the applicant or credential holder.

(2) Upon such finding the director, notwithstanding the provision of any other statute, shall issue, return, or reinstate such credential or remove any limitation on such credential if the applicant or credential holder is otherwise qualified as determined by the appropriate board to practice or to continue in the practice of the profession.

Source: Laws 1976, LB 877, § 19; Laws 1986, LB 286, § 66; Laws 1986, LB 579, § 58; Laws 1994, LB 1210, § 43; Laws 1996, LB 1044, § 394; Laws 1999, LB 828, § 50; R.S.1943, (2003), § 71-161.14; Laws 2007, LB296, § 316; Laws 2007, LB463, § 111.

38-1,112. Refusal to submit to physical or mental examination or chemical dependency evaluation; effect.

Refusal of an applicant or credential holder to submit to a physical or mental examination or chemical dependency evaluation requested by the appropriate board or the department pursuant to section 38-1,110 or 38-1,111 to determine his or her qualifications to practice or to continue in the practice of the profession for which application was made or for which he or she is credentialed by the department shall be just cause for denial of the application or for refusal of renewal or suspension of his or her credential automatically by the director until such examination or evaluation has been made.

Source: Laws 1976, LB 877, § 20; Laws 1986, LB 286, § 67; Laws 1986, LB 579, § 59; Laws 1994, LB 1210, § 44; Laws 1996, LB 1044, § 395; Laws 1999, LB 828, § 51; R.S.1943, (2003), § 71-161.15; Laws 2007, LB463, § 112.

38-1,113. Disciplinary action involving dependence or disability; appeal.

Any applicant or credential holder shall have the right to request a hearing on an order denying, refusing renewal of, limiting, suspending, or revoking a credential to practice a profession because of abuse of, dependence on, or active addiction to alcohol, any controlled substance, or any mind-altering substance that impairs the ability to practice the profession or illness, deterioration, or disability that impairs the ability to practice the profession. Such hearing shall be conducted in accordance with the Administrative Procedure Act. The denial, refusal of renewal, limitation, suspension, or revocation of a credential as provided in section 38-1,110 shall continue in effect until reversed on appeal unless otherwise disposed of pursuant to section 38-1,111.

Source: Laws 1976, LB 877, § 21; Laws 1986, LB 286, § 68; Laws 1986, LB 579, § 60; Laws 1988, LB 352, § 115; Laws 1991, LB 456, § 21; Laws 1996, LB 1044, § 396; Laws 2001, LB 398, § 24; R.S.1943, (2003), § 71-161.16; Laws 2007, LB296, § 317; Laws 2007, LB463, § 113.

Cross References

- **Administrative Procedure Act**, see section 84-920.

38-1,114. Practicing profession or business without credential; injunction.

Any person engaging in the practice of any profession or business without the appropriate credential may be restrained by temporary and permanent injunctions.

Source: Laws 1927, c. 167, § 63, p. 471; C.S.1929, § 71-801; Laws 1943, c. 150, § 17, p. 546; R.S.1943, § 71-164; Laws 1994, LB 1210, § 48; R.S.1943, (2003), § 71-164; Laws 2007, LB463, § 114.

Annotations

- A person engaging in the practice of medicine and surgery without the required statutory license may be restrained by injunction. State ex rel. Johnson v. Wagner, 139 Neb. 471, 297 N.W. 906 (1941).

- Under former statute, an injunction would not lie to prevent an unlicensed chiropractor from practicing, as a criminal action was deemed to afford an adequate remedy at law. *State v. Maltby*, 108 Neb. 578, 188 N.W. 175 (1922).

38-1,115. Prima facie evidence of practice without being credentialed; conditions.

It shall be prima facie evidence of practice without being credentialed when any of the following conditions exist:

- (1) The person admits to engaging in practice;
- (2) Staffing records or other reports from the employer of the person indicate that the person was engaged in practice;
- (3) Billing or payment records document the provision of service, care, or treatment by the person;
- (4) Service, care, or treatment records document the provision of service, care, or treatment by the person;
- (5) Appointment records indicate that the person was engaged in practice;
- (6) Water well registrations or other government records indicate that the person was engaged in practice; and
- (7) The person opens a business or practice site and announces or advertises that the business or site is open to provide service, care, or treatment.

Source: Laws 2007, LB463, § 115.

38-1,116. Practicing without credential; operating business without credential; administrative penalty; procedure; disposition; attorney's fees and costs.

(1) The department may assess an administrative penalty of ten dollars per day for each day that evidence exists of practice prior to issuance, renewal after expiration, or reinstatement of a credential to practice a profession or operate a business. The total penalty shall not exceed one thousand dollars.

(2) When the department assesses an administrative penalty, the department shall provide written notice of the assessment to the person. The notice shall be delivered in the manner prescribed by the department and shall include notice of the opportunity for a hearing.

(3) The department shall, within thirty days after receipt, remit an administrative penalty to the State Treasurer to be disposed of in accordance with Article VII, section 5, of the Constitution of Nebraska. An administrative 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 may also collect in such action attorney's fees and costs incurred directly in the collection of the administrative penalty.

Source: Laws 2003, LB 242, § 29; R.S.1943, (2003), § 71-164.01; Laws 2007, LB463, § 116.

38-1,117. False impersonation; fraud; aiding and abetting; use of false documents; penalty.

Any person who (1) presents to the department a document which is false or of which he or she is not the rightful owner for the purpose of procuring a credential, (2) falsely impersonates anyone to whom a credential has been issued by the department, (3) falsely holds himself or herself out to be a person credentialed by the department, (4) aids and abets another who is not credentialed to practice a profession that requires a credential, or (5) files or attempts to file with the department any false or forged diploma, certificate, or affidavit of identification or qualification shall be guilty of a Class IV felony.

Source: Laws 1927, c. 167, § 65, p. 471; C.S.1929, § 71-803; R.S.1943, § 71-166; Laws 1977, LB 39, § 141; Laws 1986, LB 286, § 73; Laws 1986, LB 579, § 65; Laws 1986, LB 926, § 38; Laws 1994, LB 1210, § 49; R.S.1943, (2003), § 71-166; Laws 2007, LB463, § 117.

38-1,118. General violations; penalty; second offenses; penalty.

Any person violating any of the provisions of the Uniform Credentialing Act, except as specific penalties are otherwise imposed in the act, shall be guilty of a Class III misdemeanor. Any person for a second violation of any of the provisions of the act, for which another specific penalty is not expressly imposed, shall be guilty of a Class II misdemeanor.

Source: Laws 1927, c. 167, § 66, p. 471; C.S.1929, § 71-804; R.S.1943, § 71-167; Laws 1977, LB 39, § 142; R.S.1943, (2003), § 71-167; Laws 2007, LB463, § 118.

Annotations

- Each treatment on different days constitutes a separate offense. *Harvey v. State*, 96 Neb. 786, 148 N.W. 924 (1914).

38-1,119. Certain professions and businesses; sections applicable; initial credential; renewal of credential; denial or refusal to renew; department; powers.

(1) Sections 38-1,119 to 38-1,123 apply to the following professions and businesses: Asbestos abatement, inspection, project design, and training; lead-based paint abatement, inspection, project design, and training; medical radiography; radon detection, measurement, and mitigation; water system operation; and constructing or decommissioning water wells and installing water well pumps and pumping equipment.

(2) If an applicant for an initial credential to practice a profession or operate a business does not meet all of the requirements for the credential, the department shall deny issuance of the credential. If an applicant for an initial credential or a credential holder applying for renewal of the credential has committed any of the acts set out in section 38-178 or 38-182, as applicable, the department may deny issuance or refuse renewal of the credential or may issue or renew the credential subject to any of the terms imposed under section 38-196 in order to protect the public.

Source: Laws 2007, LB463, § 119.

38-1,120. Certain professions and businesses; disciplinary actions; grounds; advice of board; notice; hearing; director; decision; review.

(1) A credential to practice a profession or operate a business subject to section 38-1,119 may be denied, refused renewal, or have disciplinary measures taken against it in accordance with section 38-196 on any of the grounds set out in section 38-178 or 38-182, as applicable. The department shall obtain the advice of the appropriate board in carrying out these duties. If the department determines to deny, refuse renewal of, or take disciplinary action against a credential, the department shall send to the applicant or credential holder a notice to the last address of record. The notice shall state the determination of the department, the reasons for the determination, a description of the nature of the violation and the statute, rule, or regulation violated, and the nature of the action being taken. The denial, refusal to renew, or disciplinary action shall become final thirty days after the mailing of the notice unless the applicant or credential holder, during such thirty-day period, makes a written request for a hearing.

(2) The hearing shall be held according to rules and regulations of the department for administrative hearings in contested cases. Witnesses may be subpoenaed by either party and shall be allowed fees at a rate prescribed by rule and regulation. On the basis of such hearing, the director shall affirm, modify, or rescind the determination of the department. Any party to the decision shall have a right to judicial review under the Administrative Procedure Act.

Source: Laws 2007, LB463, § 120.

Cross References

- **Administrative Procedure Act**, see section 84-920.

38-1,121. Certain professions and businesses; disciplinary actions; confidentiality; immunity.

A complaint submitted to the department regarding a credential holder subject to section 38-1,119 and the identity of any person making the complaint or providing information leading to the making of the complaint shall be confidential. Such persons 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.

Source: Laws 2007, LB463, § 121; Laws 2016, LB750, § 5.

38-1,122. Certain professions and businesses; disciplinary actions; emergency; department; powers; hearing; director; decision; review.

(1) If the department determines that an emergency exists requiring immediate action against a credential subject to section 38-1,119, the department may, without notice or hearing, issue an order reciting the existence of such emergency and requiring such action be taken as the department deems necessary to meet the emergency, including, but not limited to, suspension or limitation of the credential. Such order shall become effective immediately. Any credential holder to whom such order is directed shall comply immediately. Such order shall become final ten days after mailing of the order unless the credential holder, during such period, makes a written request for a hearing.

(2) The hearing shall be held as soon as possible and not later than fifteen days after the request for hearing. The hearing shall be held according to rules and regulations of the department for administrative hearings in contested cases. Witnesses may be subpoenaed by either party and shall be allowed fees at a rate prescribed by rule and regulation. On the basis of such hearing, the director shall affirm, modify, or rescind the order. Any party to the decision shall have a right to judicial review under the Administrative Procedure Act.

Source: Laws 2007, LB463, § 122.

Cross References

- **Administrative Procedure Act**, see section 84-920.

38-1,123. Certain professions and businesses; disciplinary actions; costs; how paid.

If an order issued after a hearing under section 38-1,120 or 38-1,122 is adverse to the credential holder, the costs shall be charged to him or her as in ordinary civil actions in the district court, but if the department is the unsuccessful party, the department shall pay the costs. Witness fees and costs may be taxed according to the rules prevailing in the district court. All costs accrued at the instance of the department when it is the successful party, which the department certifies cannot be collected from the other party, shall be paid out of any available funds in the Professional and Occupational Credentialing Cash Fund.

Source: Laws 2007, LB463, § 123.

38-1,124. Enforcement; investigations; violations; credential holder; duty to report; cease and desist order; violation; penalty; loss or theft of controlled substance; duty to report.

(1) The department shall enforce the Uniform Credentialing Act and for that purpose shall make necessary investigations. Every credential holder and every member of a board shall furnish the department such evidence as he or she may have relative to any alleged violation which is being investigated.

(2) Every credential holder 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 or operating any business for which a credential is required by the Uniform Credentialing Act. The department may, along with the Attorney General and other law enforcement agencies, investigate such reports or other complaints of unauthorized practice. The director, with the recommendation of the appropriate board, may issue an order to cease and desist the unauthorized practice of such profession or the unauthorized operation of such business 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 or operation of such business without a credential after receiving a cease and desist order is a Class III felony.

(3) Any credential holder 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. This subsection shall not apply to pharmacist interns or pharmacy technicians.

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; R.S.Supp.,2006, § 71-168; Laws 2007, LB236, § 7; Laws 2007, LB463, § 124; Laws 2016, LB859, § 2; Laws 2017, LB166, § 7.

38-1,125. Credential holder except pharmacist intern and pharmacy technician; incompetent, gross negligent, or unprofessional conduct; impaired or disabled person; duty to report.

(1) Except as otherwise provided in section 38-2897, every credential holder 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 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:

(i) Has acted with gross incompetence or gross negligence;

(ii) Has engaged in a pattern of incompetent or negligent conduct as defined in section 38-177;

(iii) Has engaged in unprofessional conduct as defined in section 38-179;

(iv) Has been practicing while his or her ability to practice is impaired by alcohol, controlled substances, mind-altering substances, or physical, mental, or emotional disability; or

(v) Has otherwise violated the 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:

(i) Has acted with gross incompetence or gross negligence; or

(ii) Has been practicing while his or her ability to practice is impaired by alcohol, controlled substances, mind-altering substances, or physical, mental, or emotional disability; 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 the 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) An adverse judgment, settlement, or award arising out of a professional liability claim, including a settlement made prior to suit in which the consumer releases any professional liability claim against the credentialed person, or adverse action by an insurance company affecting professional liability coverage. The department may define what constitutes a settlement that would be reportable when a credential holder refunds or reduces a fee or makes no charge for reasons related to a consumer complaint other than costs;

(iv) Denial of a credential or other form of authorization to practice by any 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 any 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, or discipline of a credential related to the applicable profession by, 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 jurisdiction.

(2) The requirement to file a report under subdivision (1)(a) or (b) of this section shall not apply:

(a) To the spouse of the credential holder;

(b) To a practitioner who is providing treatment to such credential holder in a practitioner-consumer relationship concerning information obtained or discovered in the course of treatment unless the treating practitioner determines that the condition of the credential holder may be of a nature which constitutes a danger to the public health and safety by the credential holder's continued practice; or

(c) When a credential holder who is chemically impaired enters the Licensee Assistance Program authorized by section 38-175 except as otherwise provided in such section.

(3) A report submitted by a professional liability insurance company on behalf of a credential holder within the thirty-day period prescribed in subsection (1) of this section shall be sufficient to satisfy the credential holder's reporting requirement under subsection (1) of this section.

Source: Laws 2007, LB247, § 61; Laws 2007, LB463, § 125; Laws 2017, LB166, § 8.

38-1,126. Report; confidential; immunity; use of documents.

(1) A report made to the department under section 38-1,124 or 38-1,125 shall be confidential. The identity of any person making such report or providing information leading to the making of such report shall be confidential.

(2) Any person making such a report to the department, except a person who is 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 section 38-1,124 or 38-1,125.

(3) Persons who are members of committees established under the Health Care Quality Improvement Act, the Patient Safety Improvement Act, or section 25-12,123 or witnesses before such committees shall not be required to report under section 38-1,124 or 38-1,125. Any person who is a witness before such a committee shall not be excused from reporting matters of first-hand knowledge that would otherwise be reportable under section 38-1,124 or 38-1,125 only because he or she attended or testified before such committee.

(4) Documents from original sources shall not be construed as immune from discovery or use in actions under section 38-1,125.

Source: Laws 2007, LB463, § 126; Laws 2011, LB431, § 12; Laws 2016, LB750, § 6.

Cross References

- **Health Care Quality Improvement Act**, see section 71-7904.
- **Patient Safety Improvement Act**, see section 71-8701.

38-1,127. Health care facility, peer review organization, or professional association; violations; duty to report; confidentiality; immunity; civil penalty.

(1) A health care facility licensed under the Health Care Facility Licensure Act or a peer review organization or professional association of a profession regulated under the Uniform Credentialing Act shall report to the department, on a form and in the manner specified by the department, any facts known to the facility, organization, or association, including, but not limited to, the identity of the credential holder and consumer, 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 credential holder, including settlements made prior to suit, arising out of the acts or omissions of the credential holder; or

(b) Takes action adversely affecting the privileges or membership of a credential holder 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. 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. Nothing in this subsection shall be construed to require production of records protected by the Health Care Quality Improvement Act or section 25-12,123 or patient safety work product under the Patient Safety Improvement Act except as otherwise provided in either of such acts or such section.

(3) Any health care facility, peer review organization, or professional association that fails or neglects to make a report or provide information as required under this section is subject to a civil penalty of five hundred dollars for the first offense and a civil penalty of up to one thousand dollars for a subsequent offense. Any civil penalty collected under this subsection shall be remitted to the State Treasurer to be disposed of in accordance with Article VII, section 5, of the Constitution of Nebraska.

(4) 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 the act existed on January 1, 2007, and may require a supplemental report to the extent such reports do not contain the information required by 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; R.S.Supp.,2006, § 71-168.02; Laws 2007, LB463, § 127; Laws 2011, LB431, § 13.

Cross References

- **Health Care Facility Licensure Act**, see section 71-401.
- **Health Care Quality Improvement Act**, see section 71-7904.
- **Nebraska Hospital-Medical Liability Act**, see section 44-2855.
- **Patient Safety Improvement Act**, see section 71-8701.

38-1,128. Peer review committee; health practitioners; immunity from liability; when.

No member of a peer review committee of a state or local association or society composed of persons credentialed under the Uniform Credentialing Act 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 committee, if such committee member acts without malice and in the reasonable belief that such action or recommendation is warranted by the facts known to such member after a reasonable effort is made to obtain the facts on which such action is taken or recommendation is made.

Source: Laws 1976, LB 586, § 1; R.S.1943, (2003), § 71-147.01; Laws 2007, LB463, § 128.

38-1,129. Insurer; report violation to department; confidentiality.

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. 290dd-2, and federal administrative rules and regulations, as such act and rules and regulations existed on January 1, 2007:

(1) Any insurer having knowledge of any violation of any of the Uniform Credentialing Act governing the profession of the person being reported whether or not such person is credentialed 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 person required to be credentialed whether or not such person is credentialed.

The identity of any person making such report on behalf of an insurer or providing information leading to the making of such report shall be confidential.

Source: Laws 1982, LB 421, § 2; Laws 1994, LB 1223, § 20; Laws 1999, LB 828, § 133; R.S.1943, (2003), § 71-1,199; Laws 2007, LB463, § 129; Laws 2016, LB750, § 7.

38-1,130. Insurer; report to department; form; confidentiality.

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 credential holder and consumer, when the insurer:

(1) Has reasonable grounds to believe that a person required to be credentialed has committed a violation of the provisions of the Uniform Credentialing Act governing the profession of such person whether or not such person is credentialed;

- (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 or health care service as defined in the Health Care Facility Licensure Act, or a person required to be credentialed whether or not such person is credentialed, including settlements made prior to suit in which the consumer releases any professional liability claim against the insurer, health care facility or health care service, or person required to be credentialed, arising out of the acts or omissions of such person;
- (3) Takes an adverse action affecting the coverage provided by the insurer to a person required to be credentialed, whether or not such person is credentialed, due to alleged incompetence, negligence, unethical or unprofessional conduct, or physical, mental, or chemical impairment. For purposes of this section, adverse action does not include raising 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 identity of any person making such report on behalf of an insurer or providing information leading to the making of such report shall be confidential.

Source: Laws 1982, LB 421, § 3; Laws 1991, LB 456, § 30; Laws 1994, LB 1223, § 21; Laws 1999, LB 828, § 134; Laws 2000, LB 819, § 93; R.S.1943, (2003), § 71-1,200; Laws 2007, LB152, § 1; Laws 2007, LB247, § 62; Laws 2007, LB463, § 130; Laws 2016, LB750, § 8.

Cross References

- **Health Care Facility Licensure Act**, see section 71-401.

38-1,131. Insurer; report to department; when.

A report made under section 38-1,129 or 38-1,130 shall be made within thirty days after the date of the violation, action, event, or request. Nothing in such sections shall be construed to require an insurer to report based on information gained due to the filing of a claim for payment under a health insurance policy by or on behalf of a person required to be credentialed whether or not such person is credentialed.

Source: Laws 2007, LB463, § 131.

38-1,132. Insurer; alternative reports authorized; supplemental report.

For purposes of sections 38-1,129 and 38-1,130, 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 such act existed on January 1, 2007, and may require a supplemental report to the extent such reports do not contain the information required by the department. For purposes of sections 38-1,129 and 38-1,130, the department shall accept a copy of a report made to any governmental agency charged by law with carrying out any of the provisions of the Uniform Credentialing Act or any person authorized by law to make arrests within the State of Nebraska and may require a supplemental report to the extent such copy does not contain the information required by the department.

Source: Laws 2007, LB463, § 132.

Cross References

- **Nebraska Hospital-Medical Liability Act**, see section 44-2855.

38-1,133. Insurer; failure to make report or provide information; penalty.

Any insurer who fails or neglects to make a report to or provide such information as requested by the department pursuant to section 38-1,129 or 38-1,130 within thirty days after the violation, action, event, or request is guilty of a Class III misdemeanor. Any insurer who violates this section a second or subsequent time is guilty of a Class II misdemeanor.

Source: Laws 1982, LB 421, § 4; Laws 1999, LB 828, § 135; R.S.1943, (2003), § 71-1,201; Laws 2007, LB463, § 133.

38-1,134. Insurer; reports; disclosure restricted; confidentiality.

To the extent that reports made under section 38-1,129 or 38-1,130 contain or relate to privileged communications between consumer and credential holder, such reports shall be treated by the department as privileged communications and shall be considered to be part of the investigational records of the department. Such reports may not be obtained by legal discovery proceedings or otherwise disclosed unless the privilege is waived by the consumer involved or the reports are made part of the record in a contested case under section 38-186, in which case such reports shall only be disclosed to the extent they are made a part of such record. The identity of any person making such report or providing information leading to the making of such report shall be confidential.

Source: Laws 1982, LB 421, § 5; Laws 1991, LB 456, § 31; Laws 1994, LB 1223, § 22; R.S.1943, (2003), § 71-1,202; Laws 2007, LB463, § 134; Laws 2016, LB750, § 9.

38-1,135. Insurer; immunity from liability.

Any insurer or employee of an insurer making a report as required by section 38-1,129 or 38-1,130 shall be immune from criminal penalty of any kind or from civil liability or other penalty for slander, libel, defamation, breach of the privilege between consumer and physician or between consumer and professional counselor, or violation of the laws of the State of Nebraska relating to the business of insurance that may be incurred or imposed on account of or in connection with the making of such report.

Source: Laws 1982, LB 421, § 7; Laws 1993, LB 130, § 5; Laws 1994, LB 1223, § 23; R.S.1943, (2003), § 71-1,204; Laws 2007, LB463, § 135.

38-1,136. Violation of credential holder-consumer privilege; sections, how construed.

Nothing contained in sections 38-1,129 to 38-1,136 shall be construed so as to require any credential holder to violate a privilege between a credential holder and a consumer.

Source: Laws 1982, LB 421, § 8; R.S.1943, (2003), § 71-1,205; Laws 2007, LB463, § 136.

38-1,137. Clerk of county or district court; report convictions and judgments of credentialed person; Attorney General or prosecutor; duty.

The clerk of any county or district court in this state shall report to the department the conviction of any person credentialed by the department under the Uniform Credentialing Act of any felony or of any misdemeanor involving the use, sale, distribution, administration, or dispensing of a controlled substance, alcohol or chemical impairment, or substance abuse and shall also report a judgment against any such credential holder arising out of a claim of professional liability. The Attorney General or city or county prosecutor prosecuting any such criminal action and plaintiff in any such civil action shall provide the court with information concerning the credential of the defendant or party. Notice to the department shall be filed within thirty days after the date of conviction or judgment in a manner agreed to by the director and the State Court Administrator.

Source: Laws 1994, LB 1223, § 24; Laws 1995, LB 563, § 39; Laws 1996, LB 414, § 10; Laws 1996, LB 1044, § 480; Laws 1997, LB 138, § 45; Laws 2000, LB 1115, § 24; Laws 2005, LB 256, § 32; R.S.Supp.,2006, § 71-1,339; Laws 2007, LB296, § 362; Laws 2007, LB463, § 137.

38-1,138. Complaint; investigation; confidentiality; immunity; department; powers and duties.

(1) Any person may make a complaint and request investigation of an alleged violation of the Uniform Credentialing Act or rules and regulations issued under such act. 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) 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.

Source: Laws 1991, LB 456, § 6; Laws 1993, LB 536, § 46; Laws 1994, LB 1223, § 11; Laws 1999, LB 828, § 56; R.S.1943, (2003), § 71-168.01; Laws 2007, LB463, § 138.

38-1,139. Violations; prosecution; duty of Attorney General and county attorney.

Upon the request of the department, the Attorney General shall institute in the name of the state the proper civil or criminal proceedings against any person regarding whom a complaint has been made, charging him or her with violation of any of the provisions of the Uniform Credentialing Act, and the county attorney, at the request of the Attorney General or of the department, shall appear and prosecute such action when brought in his or her county.

Source: Laws 1927, c. 167, § 70, p. 472; C.S.1929, § 71-904; R.S.1943, § 71-171; Laws 1991, LB 456, § 24; R.S.1943, (2003), § 71-171; Laws 2007, LB463, § 139.

38-1,140. Consultation with licensed veterinarian; conduct authorized.

Any person who holds a valid credential in the State of Nebraska in a health care profession or occupation regulated under the Uniform Credentialing Act may consult with a licensed veterinarian or perform collaborative animal health care tasks on an animal under the care of such veterinarian if all such tasks are performed under the immediate supervision of such veterinarian. Engaging in such conduct is hereby authorized and shall not be considered a part of the credential holder's scope of practice or a violation of the credential holder's scope of practice.

Source: Laws 2008, LB928, § 3; Laws 2009, LB463, § 1.

38-1,141. Military education, training, or service; department; acceptance for credential.

Beginning December 15, 2015, upon presentation of satisfactory evidence that the education, training, or service completed by an applicant for a credential while a member of the armed forces of the United States, active or reserve, the National Guard of any state, the military reserves of any state, or the naval militia of any state is substantially similar to the education required for the credential, the department, with the recommendation of the appropriate board, if any, shall accept such education, training, or service toward the minimum standards for the credential.

Source: Laws 2015, LB264, § 3.

38-1,142. Report to department; discrimination or retaliation prohibited; action for relief authorized.

An individual or a business credentialed pursuant to the Uniform Credentialing Act shall not discriminate or retaliate against any person who has initiated or participated in the making of a report under the act to the department. Such person may maintain an action for any type of relief, including injunctive and declaratory relief, permitted by law.

Source: Laws 2016, LB750, § 2.

38-1,143. Telehealth; provider-patient relationship; prescription authority; applicability of section.

(1) Except as otherwise provided in subsection (4) of this section, any credential holder under the Uniform Credentialing Act may establish a provider-patient relationship through telehealth.

(2) Any credential holder under the Uniform Credentialing Act who is providing a telehealth service to a patient may prescribe the patient a drug if the credential holder is authorized to prescribe under state and federal law.

(3) The department may adopt and promulgate rules and regulations pursuant to section 38-126 that are consistent with this section.

(4) This section does not apply to a credential holder under the Cosmetology, Electrology, Esthetics, Nail Technology, and Body Art Practice Act, the Dialysis Patient Care Technician Registration Act, the Environmental Health Specialists Practice Act, the Funeral Directing and Embalming Practice Act, the Massage Therapy Practice Act, the Medical Radiography Practice Act, the Nursing Home Administrator Practice Act, the Perfusion Practice Act, the Surgical First Assistant Practice Act, the Veterinary Medicine and Surgery Practice Act, or the Water Well Standards and Contractors' Practice Act.

Source: Laws 2019, LB29, § 2.

Effective Date: September 1, 2019

Cross References

- **Cosmetology, Electrology, Esthetics, Nail Technology, and Body Art Practice Act**, see section 38-1001.
- **Dialysis Patient Care Technician Registration Act**, see section 38-3701.
- **Environmental Health Specialists Practice Act**, see section 38-1301.
- **Funeral Directing and Embalming Practice Act**, see section 38-1401.
- **Massage Therapy Practice Act**, see section 38-1701.
- **Medical Radiography Practice Act**, see section 38-1901.
- **Nursing Home Administrator Practice Act**, see section 38-2401.
- **Perfusion Practice Act**, see section 38-2701.
- **Surgical First Assistant Practice Act**, see section 38-3501.
- **Veterinary Medicine and Surgery Practice Act**, see section 38-3301.
- **Water Well Standards and Contractors' Practice Act**, see section 46-1201.

38-1,144. Schedule II controlled substance or other opiate; practitioner; duties.

(1) For purposes of this section, practitioner means a physician, a physician assistant, a dentist, a pharmacist, a podiatrist, an optometrist, a certified nurse midwife, a certified registered nurse anesthetist, and a nurse practitioner.

(2) When prescribing a controlled substance listed in Schedule II of section 28-405 or any other opiate as defined in section 28-401 not listed in Schedule II, prior to issuing the practitioner's initial prescription for a course of treatment for acute or chronic pain, a practitioner involved in the course of treatment as the primary prescribing practitioner or as a member of the patient's care team who is under the direct supervision or in consultation with the primary prescribing practitioner shall discuss with the patient, or the patient's parent or guardian if the patient is younger than eighteen years of age and is not emancipated, unless the discussion has already occurred with another member of the patient's care team within the previous sixty days:

(a) The risks of addiction and overdose associated with the controlled substance or opiate being prescribed, including, but not limited to:

(i) Controlled substances and opiates are highly addictive even when taken as prescribed;

(ii) There is a risk of developing a physical or psychological dependence on the controlled substance or opiate; and

(iii) Taking more controlled substances or opiates than prescribed, or mixing sedatives, benzodiazepines, or alcohol with controlled substances or opiates, can result in fatal respiratory depression;

(b) The reasons why the prescription is necessary; and

(c) Alternative treatments that may be available.

(3) This section does not apply to a prescription for a hospice patient or for a course of treatment for cancer or palliative care.

(4) This section terminates on January 1, 2029.

Source: Laws 2018, LB931, § 3; R.S.Supp.,2018, § 28-473; Laws 2019, LB556, § 2.

Effective Date: May 2, 2019

38-1,145. Opiates; legislative findings; limitation on certain prescriptions; practitioner; duties.

(1) For purposes of this section, practitioner means a physician, a physician assistant, a dentist, a pharmacist, a podiatrist, an optometrist, a certified nurse midwife, a certified registered nurse anesthetist, and a nurse practitioner.

(2) The Legislature finds that:

(a) In most cases, acute pain can be treated effectively with nonopiate or nonpharmacological options;

(b) With a more severe or acute injury, short-term use of opiates may be appropriate;

(c) Initial opiate prescriptions for children should not exceed seven days for most situations, and two or three days of opiates will often be sufficient;

(d) If a patient needs medication beyond three days, the prescriber should reevaluate the patient prior to issuing another prescription for opiates; and

(e) Physical dependence on opiates can occur within only a few weeks of continuous use, so great caution needs to be exercised during this critical recovery period.

(3) A practitioner who is prescribing an opiate as defined in section 28-401 for a patient younger than eighteen years of age for outpatient use for an acute condition shall not prescribe more than a seven-day supply except as otherwise provided in subsection (4) of this section and, if the practitioner has not previously prescribed an opiate for such patient, shall discuss with a parent or guardian of such patient, or with the patient if the patient is an emancipated minor, the risks associated with use of opiates and the reasons why the prescription is necessary.

(4) If, in the professional medical judgment of the practitioner, more than a seven-day supply of an opiate is required to treat such patient's medical condition or is necessary for the treatment of pain associated with a cancer diagnosis or for palliative care, the practitioner may issue a prescription for the quantity needed to treat such patient's medical condition or pain. The practitioner shall document the medical condition triggering the prescription of more than a seven-day supply of an opiate in the patient's medical record and shall indicate that a nonopiate alternative was not appropriate to address the medical condition.

(5) This section does not apply to controlled substances prescribed pursuant to section 28-412.

(6) This section terminates on January 1, 2029.

Source: Laws 2018, LB931, § 4; R.S.Supp.,2018, § 28-474; Laws 2019, LB556, § 3.

Effective Date: May 2, 2019

STATUTES PERTAINING TO VERIFICATION OF LAWFUL PRESENCE

4-108. Public benefits; state agency or political subdivision; verification of lawful presence; employee; participation in retirement system; restriction.

(1) Notwithstanding any other provisions of law, unless exempted from verification under section 4-110 or pursuant to federal law, no state agency or political subdivision of the State of Nebraska shall provide public benefits to a person not lawfully present in the United States.

(2) Except as provided in section 4-110 or if exempted by federal law, every agency or political subdivision of the State of Nebraska shall verify the lawful presence in the United States of any person who has applied for public benefits administered by an agency or a political subdivision of the State of Nebraska. This section shall be enforced without regard to race, religion, gender, ethnicity, or national origin.

(3) On and after October 1, 2009, no employee of a state agency or political subdivision of the State of Nebraska shall be authorized to participate in any retirement system, including, but not limited to, the systems provided for in the Class V School Employees Retirement Act, the County Employees Retirement Act, the Judges Retirement Act, the Nebraska State Patrol Retirement Act, the School Employees Retirement Act, and the State Employees Retirement Act, unless the employee (a) is a United States citizen or (b) is a qualified alien under the federal Immigration and Nationality Act, 8 U.S.C. 1101 et seq., as such act existed on January 1, 2009, and is lawfully present in the United States.

Source: Laws 2009, LB403, § 1; Laws 2011, LB509, § 1.

Cross References

- **Class V School Employees Retirement Act**, see section 79-978.01.
- **County Employees Retirement Act**, see section 23-2331.
- **Judges Retirement Act**, see section 24-701.01.
- **Nebraska State Patrol Retirement Act**, see section 81-2014.01.
- **School Employees Retirement Act**, see section 79-901.
- **State Employees Retirement Act**, see section 84-1331.

4-109. Public benefits, defined.

For purposes of sections 4-108 to 4-113, public benefits means any grant, contract, loan, professional license, commercial license, welfare benefit, health payment or financial assistance benefit, disability benefit, public or assisted housing benefit, postsecondary education benefit involving direct payment of financial assistance, food assistance benefit, or unemployment benefit or any other similar benefit provided by or for which payments or assistance are provided to an individual, a household, or a family eligibility unit by an agency of the United States, the State of Nebraska, or a political subdivision of the State of Nebraska.

Source: Laws 2009, LB403, § 2.

4-110. Public benefits; verification of lawful presence; exemptions; legislative findings.

Verification of lawful presence in the United States pursuant to section 4-108 is not required for:

- (1) Any purpose for which lawful presence in the United States is not restricted by law, ordinance, or regulation;
- (2) Assistance for health care services and products, not related to an organ transplant procedure, that are necessary for the treatment of an emergency medical condition, including emergency labor and delivery, manifesting itself by acute symptoms of sufficient severity, including severe pain, such that the absence of immediate medical attention could reasonably be expected to result in (a) placing the patient's health in serious jeopardy, (b) serious impairment to bodily functions, or (c) serious dysfunction of any bodily organ or part;
- (3) Short-term, noncash, in-kind emergency disaster relief;
- (4) Public health assistance for immunizations with respect to diseases and for testing and treatment of symptoms of communicable diseases, whether or not such symptoms are caused by a communicable disease; or
- (5) Programs, services, or assistance necessary for the protection of life or safety, such as soup kitchens, crisis counseling and intervention, and short-term shelter, which (a) deliver in-kind services at the community level, including those which deliver such services through public or private, nonprofit agencies and (b) do not condition the provision of assistance, the amount of assistance provided, or the cost of assistance provided on the income or resources of the recipient.

The Legislature finds that unborn children do not have immigration status and therefore are not within the scope of section 4-108. Prenatal care services available pursuant to sections 68-915 and 68-972 to unborn children, whose eligibility is independent of the mother's eligibility status, shall not be deemed to be tied to the immigration status of the mother and therefore are not included in the restrictions imposed by section 4-108.

Source: Laws 2009, LB403, § 3; Laws 2012, LB599, § 1.

4-111. Public benefits; verification of lawful presence; attestation required; professional or commercial license; requirements.

(1) Verification of lawful presence in the United States pursuant to section 4-108 requires that the applicant for public benefits attest in a format prescribed by the Department of Administrative Services that:

- (a) He or she is a United States citizen; or
- (b) He or she is a qualified alien under the federal Immigration and Nationality Act, 8 U.S.C. 1101 et seq., as such act existed on January 1, 2009, and is lawfully present in the United States.

(2) A state agency or political subdivision of the State of Nebraska may adopt and promulgate rules and regulations or procedures for the electronic filing of the attestation required under subsection (1) of this section if such attestation is substantially similar to the format prescribed by the Department of Administrative Services.

(3)(a) The Legislature finds that it is in the best interest of the State of Nebraska to make full use of the skills and talents in the state by ensuring that a person who is work-authorized is able to obtain a professional or commercial license and practice his or her profession.

(b) For purposes of a professional or commercial license, the Legislature finds that a person not described in subdivision (1)(a) or (1)(b) of this section who submits (i) an unexpired employment authorization document issued by the United States Department of Homeland Security, Form I-766, and (ii) documentation issued by the United States Department of Homeland Security, the United States Citizenship and Immigration Services, or any other federal agency, such as one of the types of Form I-797 used by the United States Citizenship and Immigration Services, demonstrating that such person is described in section 202(c)(2)(B)(i) through (ix) of the federal REAL ID Act of 2005, Public Law 109-13, has demonstrated lawful presence pursuant to section 4-108 and is eligible to obtain such license. Such license shall be valid only for the period of time during which such person's employment authorization document is valid. Nothing in this subsection shall affect the requirements to obtain a professional or commercial license that are unrelated to the lawful presence requirements demonstrated pursuant to this subsection.

(c) Nothing in this subsection shall be construed to grant eligibility for any public benefits other than obtaining a professional or commercial license.

(d) Any person who has complied with the requirements of this subsection shall have his or her employment authorization document verified through the Systematic Alien Verification for Entitlements Program operated by the United States Department of Homeland Security or an equivalent program designated by the United States Department of Homeland Security.

(e) The Legislature enacts this subsection pursuant to the authority provided in 8 U.S.C. 1621(d), as such section existed on January 1, 2016.

Source: Laws 2009, LB403, § 4; Laws 2016, LB947, § 1.

4-112. Public benefits; applicant; eligibility; verification; presumption.

For any applicant who has executed a document described in subdivision (1)(b) of section 4-111, eligibility for public benefits shall be verified through the Systematic Alien Verification for Entitlements Program operated by the United States Department of Homeland Security or an equivalent program designated by the United States Department of Homeland Security. Until such verification of eligibility is made, such attestation may be presumed to be proof of lawful presence for purposes of sections 4-108 to 4-113 unless such verification is required before providing the public benefit under another provision of state or federal law.

Source: Laws 2009, LB403, § 5; Laws 2016, LB947, § 2.

4-113. Public benefits; state agency; annual report.

Each state agency which administers any program of public benefits shall provide an annual report not later than January 31 for the prior year to the Governor and the Clerk of the Legislature with respect to compliance with sections 4-108 to 4-113. The report submitted to the Clerk of the Legislature shall be submitted electronically. The report shall include, but not be limited to, the total number of applicants for benefits and the number of applicants rejected pursuant to such sections.

Source: Laws 2009, LB403, § 6; Laws 2012, LB782, § 10.

STATUTES PERTAINING TO NEBRASKA REGULATION OF HEALTH PROFESSIONS ACT

71-6201. Act, how cited.

Sections 71-6201 to 71-6229 shall be known and may be cited as the Nebraska Regulation of Health Professions Act.

Source: Laws 1985, LB 407, § 1; Laws 1988, LB 384, § 1; Laws 1993, LB 536, § 102; Laws 2012, LB834, § 3.

71-6202. Purpose of act.

The purpose of the Nebraska Regulation of Health Professions Act is to establish guidelines for the regulation of health professions which are not licensed or regulated and those licensed or regulated health professions which seek to change their scope of practice. The Legislature believes that all individuals should be permitted to provide a health service, a health-related service, or an environmental service unless there is an overwhelming need for the state to protect the public from harm.

Source: Laws 1985, LB 407, § 2; Laws 2012, LB834, § 4.

71-6203. Definitions, where found.

For purposes of the Nebraska Regulation of Health Professions Act, unless the context otherwise requires, the definitions found in sections 71-6204 to 71-6220.01 shall be used.

Source: Laws 1985, LB 407, § 3; Laws 1988, LB 384, § 2; Laws 1993, LB 536, § 103; Laws 2012, LB834, § 5.

71-6204. Applicant group, defined.

Applicant group shall mean any health professional group or organization, any individual, or any other interested party which proposes that any health professional group not previously regulated be regulated by the division or which proposes to change the scope of practice of a regulated health profession.

Source: Laws 1985, LB 407, § 4; Laws 2012, LB834, § 6.

71-6205. Board, defined.

Board shall mean the State Board of Health.

Source: Laws 1985, LB 407, § 5.

71-6206. Certificate or certification, defined.

Certificate or certification shall mean 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 certified in the title or designation to perform prescribed tasks.

Source: Laws 1985, LB 407, § 6; Laws 2012, LB834, § 7.

71-6206.01. Chairperson, defined.

Chairperson shall mean the chairperson of the Health and Human Services Committee of the Legislature.

Source: Laws 1993, LB 536, § 104.

71-6207. Committee, defined.

Committee shall mean the technical committee created in section 71-6224.

Source: Laws 1985, LB 407, § 7.

71-6207.01. Credentialing, defined.

Credentialing shall mean the process of regulating health professions by means of registration, certification, or licensure.

Source: Laws 1988, LB 384, § 3.

71-6207.02. Directed review, defined.

Directed review shall mean a review conducted pursuant to section 71-6223.02 in which (1) there is no applicant group or application, (2) the duty of the committee is to formulate an initial proposal on the issues subject to review, and (3) the duty of the board and the director is to evaluate the proposal using the appropriate criteria and to make recommendations to the Legislature.

Source: Laws 1993, LB 536, § 105; Laws 2015, LB90, § 1.

71-6208. Director, defined.

Director shall mean the Director of Public Health of the Division of Public Health of the Department of Health and Human Services.

Source: Laws 1985, LB 407, § 8; Laws 1996, LB 1044, § 758; Laws 2007, LB296, § 652; Laws 2012, LB834, § 8.

71-6208.01. Division, defined.

Division shall mean the Division of Public Health of the Department of Health and Human Services.

Source: Laws 2012, LB834, § 9.

71-6209. Grandfather clause, defined.

Grandfather clause shall mean a provision in a regulatory statute applicable to practitioners actively engaged in the regulated health profession prior to the effective date of the regulatory statute which exempts the practitioners from meeting the prerequisite qualifications set forth in the regulatory statute to perform prescribed occupational tasks.

Source: Laws 1985, LB 407, § 9.

71-6210. Health profession, defined.

Health profession shall mean a vocation involving health services, health-related services, or environmental services requiring specialized knowledge and training. Health profession does not include the vocation of duly recognized members of the clergy acting in their ministerial capacity.

Source: Laws 1985, LB 407, § 10; Laws 2012, LB834, § 10.

71-6211. Health professional group not previously regulated, defined.

Health professional group not previously regulated shall mean those persons or groups who are not currently licensed or otherwise regulated under the Uniform Credentialing Act, who are determined by the director to be qualified by training, education, or experience to perform the functions prescribed in this section, and whose principal functions, customarily performed for remuneration, are to render services directly or indirectly to individuals for the purpose of:

- (1) Preventing physical, mental, or emotional injury or illness, excluding persons acting in their capacity as clergy;
- (2) Facilitating recovery from injury or illness;
- (3) Providing rehabilitative or continuing care following injury or illness; or
- (4) Providing any other health service, health-related service, or environmental service which may be subject to regulation by the division.

Source: Laws 1985, LB 407, § 11; Laws 2007, LB463, § 1241; Laws 2012, LB834, § 11.

Cross References

- **Uniform Credentialing Act**, see section 38-101.

71-6212. Inspection, defined.

Inspection shall mean the periodic examination of practitioners by a state agency in order to ascertain whether the practitioner's occupation is being carried out in a manner consistent with the public health, safety, and welfare.

Source: Laws 1985, LB 407, § 12.

71-6213. License, licensing, or licensure, defined.

License, licensing, or licensure shall mean 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 tasks and use a particular title.

Source: Laws 1985, LB 407, § 13; Laws 2012, LB834, § 12.

71-6214. Professional license, defined.

Professional license shall mean an individual nontransferable authorization to work in a health profession based on qualifications which include graduation from an accredited or approved program and acceptable performance on a qualifying examination or series of examinations.

Source: Laws 1985, LB 407, § 14.

71-6215. Practitioner, defined.

Practitioner shall mean an individual who has achieved knowledge and skill by the practice of a specified health profession and is actively engaged in such profession.

Source: Laws 1985, LB 407, § 15.

71-6216. Public member, defined.

Public member shall mean an individual who is not, and never was, a member of the health profession being regulated, the spouse of a member, or an individual who does not have and never has had a material financial interest in the health profession being regulated or an activity directly related to the health profession being regulated.

Source: Laws 1985, LB 407, § 16; Laws 2012, LB834, § 13.

71-6217. Registration, defined.

Registration shall mean the formal notification which, prior to rendering services, a practitioner submits to a state agency setting forth the name and address of the practitioner, the location, nature, and operation of the health activity to be practiced, and such other information which is required by the regulatory entity. A registered practitioner may be subject to discipline and standards of professional conduct established by the regulatory entity and may be required to meet any test of education, experience, or training in order to render services.

Source: Laws 1985, LB 407, § 17; Laws 1988, LB 384, § 5; Laws 2012, LB834, § 14.

71-6218. Regulated health professions, defined.

Regulated health professions shall mean those persons or groups who are currently licensed or otherwise regulated under the Uniform Credentialing Act, who are qualified by training, education, or experience to perform the functions prescribed in this section, and whose principal functions, customarily performed for remuneration, are to render services directly or indirectly to individuals for the purpose of:

- (1) Preventing physical, mental, or emotional injury or illness;
- (2) Facilitating recovery from injury or illness;
- (3) Providing rehabilitative or continuing care following injury or illness; or
- (4) Providing any other health service, health-related service, or environmental service which may be subject to regulation by the division.

Source: Laws 1985, LB 407, § 18; Laws 2007, LB463, § 1242; Laws 2012, LB834, § 15.

Cross References

- **Uniform Credentialing Act**, see section 38-101.

71-6219. Regulatory entity, defined.

Regulatory entity shall mean any board, commission, agency, division, or other unit or subunit of state government which regulates one or more professions, occupations, industries, businesses, or other endeavors in this state.

Source: Laws 1985, LB 407, § 19.

71-6219.01. Review body, defined.

Review body shall mean the committee, the board, or the director charged with reviewing applications for new credentialing or change in scope of practice.

Source: Laws 1988, LB 384, § 6.

71-6220. State agency, defined.

State agency shall include every state office, department, board, commission, regulatory entity, and agency of the state and, when provided specifically by law to be a state agency for purposes of this section, programs and activities involving less than the full responsibility of a state agency.

Source: Laws 1985, LB 407, § 20; Laws 1991, LB 81, § 5.

71-6220.01. Welfare, defined.

Welfare shall include the ability of the public to achieve ready access to high quality health care services at reasonable costs.

Source: Laws 1988, LB 384, § 4.

71-6221. Regulation of health profession; change in scope of practice; when.

(1) A health profession shall be regulated by the state only when:

- (a) Unregulated practice can clearly harm or endanger the health, safety, or welfare of the public;
- (b) Regulation of the health profession does not impose significant new economic hardship on the public, significantly diminish the supply of qualified practitioners, or otherwise create barriers to service that are not consistent with the public welfare and interest;
- (c) The public needs assurance from the state of initial and continuing professional ability; and
- (d) The public cannot be protected by a more effective alternative.

(2) If it is determined that practitioners of a health profession not currently regulated are prohibited from the full practice of their profession in Nebraska, then the following criteria shall be used to determine whether regulation is necessary:

- (a) Absence of a separate regulated profession creates a situation of harm or danger to the health, safety, or welfare of the public;
- (b) Creation of a separate regulated profession would not create a significant new danger to the health, safety, or welfare of the public;
- (c) Creation of a separate regulated profession would benefit the health, safety, or welfare of the public; and

- (d) The public cannot be protected by a more effective alternative.
- (3) The scope of practice of a regulated health profession shall be changed only when:
 - (a) The health, safety, and welfare of the public are inadequately addressed by the present scope of practice or limitations on the scope of practice;
 - (b) Enactment of the proposed change in scope of practice would benefit the health, safety, or welfare of the public;
 - (c) The proposed change in scope of practice does not create a significant new danger to the health, safety, or welfare of the public;
 - (d) The current education and training for the health profession adequately prepares practitioners to perform the new skill or service;
 - (e) There are appropriate postprofessional programs and competence assessment measures available to assure that the practitioner is competent to perform the new skill or service in a safe manner; and
 - (f) There are adequate measures to assess whether practitioners are competently performing the new skill or service and to take appropriate action if they are not performing competently.
- (4) The division shall, by rule and regulation, establish standards for the application of each criterion which shall be used by the review bodies in recommending whether proposals for credentialing or change in scope of practice meet the criteria.

Source: Laws 1985, LB 407, § 21; Laws 1988, LB 384, § 7; Laws 1996, LB 1044, § 759; Laws 2007, LB296, § 653; Laws 2012, LB834, § 16.

71-6222. Least restrictive method of regulation; how implemented.

After evaluating the criteria in sections 71-6221 to 71-6223 and considering governmental and societal costs and benefits, if the Legislature finds that it is necessary to regulate a health profession not previously regulated by law, the least restrictive alternative method of regulation shall be implemented, consistent with the public interest and this section, as follows:

- (1) When the threat to the public health, safety, welfare, or economic well-being is relatively small, regulation shall be by means other than direct credentialing of the health profession. Such regulation may include, but shall not be limited to:
 - (a) Inspection requirements;
 - (b) Enabling an appropriate state agency to bring an end to a harmful practice by injunctive relief in court;
 - (c) Regulating the business activity or entity providing the service rather than the employees of the business or entity; or
 - (d) Regulating or modifying the regulation of the health profession supervising or responsible for the service being performed;
- (2) When there exists a diversity of approaches, methods, and theories by which services may be rendered and when the right of the consumer to choose freely among such options is considered to be of equal importance with the need to protect the public from harm, the regulation shall implement a system of registration;
- (3) When the consumer may have a substantial basis for relying on the services of a practitioner, the regulation shall implement a system of certification; or
- (4) When it is apparent that adequate regulation cannot be achieved by means other than licensing, the regulation shall implement a system of licensing.

Source: Laws 1985, LB 407, § 22; Laws 1988, LB 384, § 8.

71-6223. Letter of intent; application; contents.

- (1) An applicant group shall submit a letter of intent to file an application to the director on forms prescribed by the director. The letter of intent shall identify the applicant group, the proposed regulation or change in scope of practice sought, and information sufficient for the director to determine whether the application is eligible for review.
- (2) The director shall notify the applicant group as to whether it is eligible for review within fifteen days after the receipt of the letter of intent. The final application shall be submitted to the director who shall notify the applicant group of its acceptance for review within fifteen days after receipt of the final application. If more than one application is received in a given year, the director may establish the order in which applications shall be reviewed.
- (3) The application shall include an explanation of:
 - (a) The problem created by not regulating a health professional group not previously regulated or by not changing the scope of practice of a regulated health profession;
 - (b) If the application is for the regulation of a health professional group not previously regulated, all feasible methods of regulation, including those methods listed in section 71-6222, and the impact of such methods on the public;
 - (c) The benefit to the public of regulating a health professional group not previously regulated or changing the scope of practice of a regulated health profession;
 - (d) The extent to which regulation or the change of scope of practice might harm the public;
 - (e) The type of standards that exist to ensure that a practitioner of a health profession would maintain competency;

- (f) A description of the health professional group proposed for regulation, including a list of associations, organizations, and other groups representing the practitioners in this state, an estimate of the number of practitioners in each group, and whether the groups represent different levels of practice;
- (g) The role and availability of third-party reimbursement for the services provided by the applicant group;
- (h) The experience of other jurisdictions in regulating the practitioners affected by the application;
- (i) The expected costs of regulation, including (i) the impact registration, certification, or licensure will have on the costs of the services to the public and (ii) the cost to the state and to the general public of implementing the proposed legislation; and
- (j) Other information relevant to the requested review as determined by the division.

Source: Laws 1985, LB 407, § 23; Laws 1988, LB 384, § 9; Laws 2012, LB834, § 17.

71-6223.01. Application fee; disposition; waiver.

Each application shall be accompanied by an application fee of five hundred dollars to be submitted at the time the letter of intent is filed. The division shall remit all application fees to the State Treasurer for credit to the Professional and Occupational Credentialing Cash Fund. The application fee shall not be refundable, but the director may waive all or part of the fee if he or she finds it to be in the public interest to do so. Such a finding by the director may include, but shall not be limited to, circumstances in which the director determines that the application would be eligible for review and:

- (1) The applicant group is an agency of state government;
- (2) Members of the applicant group will not be materially affected by the implementation of the proposed regulation or change in scope of practice; or
- (3) Payment of the application fee would impose unreasonable hardship on members of the applicant group.

Source: Laws 1988, LB 384, § 14; Laws 2012, LB834, § 18.

71-6223.02. Directed review; initiation; procedure; report.

At any time the director and the chairperson may initiate a directed review or the chairperson in consultation with the members of the Health and Human Services Committee of the Legislature may initiate a directed review. The purpose of a directed review is to determine the advisability of credentialing a health professional group not previously regulated, of changing the scope of practice of a regulated health profession, or of other issues regarding the regulation of health professions. Before initiating a directed review, the director and the chairperson, or the chairperson in consultation with the Health and Human Services Committee, shall determine that no appropriate applicant group exists. No letter of intent, applicant group, application, or application fee shall be required in a directed review. The duty of the technical committee in a directed review shall be to investigate the issues that are the subject of the review, to hold a public hearing to receive information from the public on the issues, to develop a specific proposal to address the issues investigated taking into account the appropriate criteria as set forth in section 71-6221, and to prepare a final report containing the technical committee's proposal, other options considered, and other relevant information.

Source: Laws 1993, LB 536, § 106; Laws 2015, LB90, § 2.

71-6224. Technical committee; appointment; membership; meetings; duties.

(1) The director with the advice of the board shall appoint an appropriate technical committee to examine and investigate each application. The committee shall consist of six appointed members and one member of the board designated by the board who shall serve as chairperson of the committee. The chairperson of the committee shall not be a member of the applicant group, any health profession sought to be regulated by the application, or any health profession which is directly or indirectly affected by the application. The director shall ensure that the total composition of the committee is fair, impartial, and equitable. In no event shall more than one member of the same regulated health profession, the applicant group, or the health profession sought to be regulated by an application serve on a technical committee.

(2) As soon as possible after its appointment, the committee shall meet and review the application assigned to it. The committee shall serve as a factfinding body and undertake such investigation as it deems necessary to address the issues identified in the application. As part of its investigation, each committee shall consider available scientific evidence and conduct public factfinding hearings. Each committee shall comply with the Open Meetings Act.

(3) An applicant group shall have the burden of producing evidence to support its application.

(4) Each committee shall detail its findings in a report and file the report with the board and the director. Each committee shall evaluate the application presented to it on the basis of the appropriate criteria as established in sections 71-6221 to 71-6223, shall make written findings on all criteria, and shall make a recommendation for approval or denial. Whether it recommends approval or denial of an application, the committee may make additional recommendations regarding changes to the proposal or other solutions to problems identified during the review and may comment on the anticipated benefits to the health, safety, and welfare of the public. If the committee recommends approval of an application for regulation of a health profession not currently regulated, it shall also recommend the least restrictive method of regulation to be implemented consistent with the cost-effective protection of the public and with section 71-6222. The committee may recommend a specific method of regulation not listed in section 71-6222 if it finds that such method is the best alternative method of regulation.

Source: Laws 1985, LB 407, § 24; Laws 1988, LB 384, § 10; Laws 2004, LB 821, § 20; Laws 2012, LB834, § 19.

Cross References

- **Open Meetings Act**, see section 84-1407.

71-6225. Board; review technical committee report; report to director.

The board shall receive reports from the technical committees and shall meet to review and discuss each report. The board shall apply the criteria established in sections 71-6221 to 71-6223 and compile its own report, including its findings and recommendations, and submit such report, together with the committee report, to the director. The recommendation of the board shall be developed in a manner consistent with subsection (4) of section 71-6224.

Source: Laws 1985, LB 407, § 25; Laws 1988, LB 384, § 11; Laws 2012, LB834, § 20.

71-6226. Director; prepare final report; recommendations.

(1) After receiving and considering reports from the committee or the board, the director shall prepare a final report for the Legislature. The final report shall include copies of the committee report and the board report, if any, but the director shall not be bound by the findings and recommendations of such reports. The director in compiling his or her report shall apply the criteria established in sections 71-6221 to 71-6223 and may consult with the board or the committee. The recommendation of the director shall be developed in a manner consistent with subsection (4) of section 71-6224. The final report shall be submitted electronically to the Speaker of the Legislature, the Chairperson of the Executive Board of the Legislature, and the Chairperson of the Health and Human Services Committee of the Legislature no later than twelve months after the application is submitted to the director and found to be complete and shall be made available electronically to all other members of the Legislature upon request.

(2) The director may recommend that no legislative action be taken on an application. If the director recommends that an application of an applicant group be approved, the director shall recommend an agency to be responsible for the regulation and the level of regulation to be assigned to such applicant group.

(3) An application which is resubmitted shall be considered the same as a new application.

Source: Laws 1985, LB 407, § 26; Laws 1988, LB 384, § 12; Laws 2012, LB782, § 123; Laws 2012, LB834, § 21.

71-6227. Rules and regulations; professional and clerical services; expenses.

(1) The director may, with the advice of the board, adopt and promulgate rules and regulations necessary to carry out the Nebraska Regulation of Health Professions Act.

(2) The director shall provide all necessary professional and clerical services to assist the committees and the board. Records of all official actions and minutes of all business coming before the committees and the board shall be kept. The director shall be the custodian of all records, documents, and other property of the committees and the board.

(3) Committee members shall receive no salary, but shall be reimbursed for their actual and necessary expenses as provided in sections 81-1174 to 81-1177 for state employees.

Source: Laws 1985, LB 407, § 27.

71-6228. Repealed. Laws 2012, LB 834, § 23.

71-6229. Act, how construed.

Nothing in the Nebraska Regulation of Health Professions Act shall apply to the practice of the religious tenets of any recognized church or religious denomination which includes healing solely by spiritual means through prayer.

Source: Laws 1985, LB 407, § 29.

STATUTES PERTAINING TO HEALTH CARE QUALITY IMPROVEMENT ACT

71-7904. Act, how cited.

Sections 71-7904 to 71-7913 shall be known and may be cited as the Health Care Quality Improvement Act.

Source: Laws 2011, LB431, § 1; Laws 2019, LB119, § 1.

Effective Date: September 1, 2019

71-7905. Purposes of act.

The purposes of the Health Care Quality Improvement Act are to provide protection for those individuals who participate in peer review activities which evaluate the quality and efficiency of health care providers and to protect the confidentiality of peer review records.

Source: Laws 2011, LB431, § 2.

71-7906. Definitions, where found.

For purposes of the Health Care Quality Improvement Act, the definitions found in sections 71-7907 to 71-7910.01 apply.

Source: Laws 2011, LB431, § 3; Laws 2019, LB119, § 2.

Effective Date: September 1, 2019

71-7907. Health care provider, defined.

Health care provider means:

- (1) A facility licensed under the Health Care Facility Licensure Act;
- (2) A health care professional licensed under the Uniform Credentialing Act;
- (3) A professional health care service entity; and
- (4) An organization or association of health care professionals licensed under the Uniform Credentialing Act.

Source: Laws 2011, LB431, § 4; Laws 2019, LB119, § 3.

Effective Date: September 1, 2019

Cross References

- **Health Care Facility Licensure Act**, see section 71-401.
- **Uniform Credentialing Act**, see section 38-101.

71-7908. Incident report, defined.

Incident report or risk management report means a report of an incident involving injury or potential injury to a patient as a result of patient care provided by a health care provider, including both an individual who provides health care and an entity that provides health care, that is created specifically for and collected and maintained for exclusive use by a peer review committee of a health care entity and that is within the scope of the functions of that committee.

Source: Laws 2011, LB431, § 5.

71-7909. Peer review, defined.

Peer review means the procedure by which health care providers evaluate the quality and efficiency of services ordered or performed by other health care providers, including practice analysis, inpatient hospital and extended care facility utilization review, medical audit, ambulatory care review, root cause analysis, claims review, underwriting assistance, and the compliance of a hospital, nursing home, or other health care facility operated by a health care provider with the standards set by an association of health care providers and with applicable laws, rules, and regulations.

Source: Laws 2011, LB431, § 6.

71-7910. Peer review committee, defined; policies and procedures.

(1) Peer review committee means a utilization review committee, quality assessment committee, performance improvement committee, tissue committee, credentialing committee, or other committee established by a professional health care service entity or by the governing board of a facility which is a health care provider that does either of the following:

- (a) Conducts professional credentialing or quality review activities involving the competence of, professional conduct of, or quality of care provided by a health care provider, including both an individual who provides health care and an entity that provides health care; or
- (b) Conducts any other attendant hearing process initiated as a result of a peer review committee's recommendations or actions.

(2) To conduct peer review pursuant to the Health Care Quality Improvement Act, a professional health care service entity shall adopt and adhere to written policies and procedures governing the peer review committee of the professional health care service entity.

Source: Laws 2011, LB431, § 7; Laws 2019, LB119, § 5.

Effective Date: September 1, 2019

71-7910.01. Professional health care service entity, defined.

Professional health care service entity means an entity which is organized for purposes of rendering professional services pursuant to the Nebraska Professional Corporation Act, the Nebraska Uniform Limited Liability Company Act, or the Uniform Partnership Act of 1998 and which renders health care services through individuals credentialed under the Uniform Credentialing Act.

Source: Laws 2019, LB119, § 4.

Effective Date: September 1, 2019

Cross References

- **Nebraska Professional Corporation Act**, see section 21-2201.
- **Nebraska Uniform Limited Liability Company Act**, see section 21-101.
- **Uniform Credentialing Act**, see section 38-101.
- **Uniform Partnership Act of 1998**, see section 67-401.

71-7911. Liability for activities relating to peer review.

(1) A health care provider or an individual (a) serving as a member or employee of a peer review committee, working on behalf of a peer review committee, furnishing counsel or services to a peer review committee, or participating in a peer review activity as an officer, director, employee, or member of a professional health care service entity or an officer, director, employee, or member of the governing board of a facility which is a health care provider and (b) acting without malice shall not be held liable in damages to any person for any acts, omissions, decisions, or other conduct within the scope of the functions of a peer review committee.

(2) A person who makes a report or provides information to a peer review committee shall not be subject to suit as a result of providing such information if such person acts without malice.

Source: Laws 2011, LB431, § 8; Laws 2019, LB119, § 6.

Effective Date: September 1, 2019

71-7912. Confidentiality; discovery; availability of medical records, documents, or information; limitation; burden of proof.

(1) The proceedings, records, minutes, and reports of a peer review committee shall be held in confidence and shall not be subject to discovery or introduction into evidence in any civil action. No person who attends a meeting of a peer review committee, works for or on behalf of a peer review committee, provides information to a peer review committee, or participates in a peer review activity as an officer, director, employee, or member of a professional health care service entity or an officer, director, employee, or member of the governing board of a facility which is a health care provider shall be permitted or required to testify in any such civil action as to any evidence or other matters produced or presented during the proceedings or activities of the peer review committee or as to any findings, recommendations, evaluations, opinions, or other actions of the peer review committee or any members thereof.

(2) Nothing in this section shall be construed to prevent discovery or use in any civil action of medical records, documents, or information otherwise available from original sources and kept with respect to any patient in the ordinary course of business, but the records, documents, or information shall be available only from the original sources and cannot be obtained from the peer review committee's proceedings or records.

(3) A health care provider or individual claiming the privileges under this section has the burden of proving that the communications and documents are protected.

Source: Laws 2011, LB431, § 9; Laws 2019, LB119, § 7.

Effective Date: September 1, 2019

71-7913. Incident report or risk management report; how treated; burden of proof.

(1) An incident report or risk management report and the contents of an incident report or risk management report are not subject to discovery in, and are not admissible in evidence in the trial of, a civil action for damages for injury, death, or loss to a patient of a health care provider. A person who prepares or has knowledge of the contents of an incident report or risk management report shall not testify and shall not be required to testify in any civil action as to the contents of the report.

(2) A health care provider or individual claiming the privileges under this section has the burden of proving that the communications and documents are protected.

Source: Laws 2011, LB431, § 10; Laws 2019, LB119, § 8.
Effective Date: September 1, 2019