

LEGISLATURE OF NEBRASKA
NINETY-SIXTH LEGISLATURE
FIRST SESSION
LEGISLATIVE BILL 209

Introduced by Schmitt, 41; Dierks, 40

Read first time January 11, 1999

Committee: Health and Human Services

A BILL

1 FOR AN ACT relating to the Uniform Licensing Law; to amend section
2 71-155, Reissue Revised Statutes of Nebraska, and
3 sections 71-101 and 71-147, Revised Statutes Supplement,
4 1998; to authorize certain medical care; to define terms;
5 to provide powers and duties; to harmonize provisions;
6 and to repeal the original sections.
7 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 71-101, Revised Statutes Supplement,
2 1998, is amended to read:

3 71-101. Sections 71-101 to 71-1,107.30, 71-1,133 to
4 71-1,338, 71-1301 to 71-1354, and 71-2801 to 71-2822 and sections 3
5 and 4 of this act shall be known and may be cited as the Uniform
6 Licensing Law.

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

9 (1) Board of examiners or board ~~shall mean~~ means one of
10 the boards appointed by the State Board of Health;

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

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

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

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

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

28 (7) Certificate, certify, or certification, with respect

1 to professions, ~~shall mean~~ means a voluntary process by which a
 2 statutory, regulatory entity grants recognition to an individual
 3 who has met certain prerequisite qualifications specified by such
 4 regulatory entity and who may assume or use the word certified in
 5 the title or designation to perform prescribed health professional
 6 tasks. When appropriate, certificate ~~shall~~ also ~~mean~~ means a
 7 document issued by the department which designates particular
 8 credentials for an individual; ~~and~~

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

13 (9) Alternative medical treatment means any health care
 14 method of diagnosis, treatment, or healing that is not generally
 15 used but which provides a reasonable potential for therapeutic gain
 16 in a patient's medical condition that is not outweighed by the risk
 17 of such method; and

18 (10) Effectively treats means the application of a remedy
 19 which is appropriate for the physical condition which is the
 20 subject of the remedy, and which remedy is without measurable
 21 harmful effect.

22 Sec. 2. Section 71-147, Revised Statutes Supplement,
 23 1998, is amended to read:

24 71-147. A license, certificate, or registration to
 25 practice a profession may be denied, refused renewal, limited,
 26 revoked, or suspended or have other disciplinary measures taken
 27 against it in accordance with section 71-155 when the applicant,
 28 licensee, certificate holder, or registrant is guilty of any of the

1 following acts or offenses:

2 (1) Fraud, forgery, or misrepresentation of material
3 facts in procuring or attempting to procure a license, certificate,
4 or registration;

5 (2) Grossly immoral or dishonorable conduct evidencing
6 unfitness or lack of proficiency sufficient to meet the standards
7 required for practice of the profession in this state;

8 (3) Habitual intoxication or active dependency on or
9 addiction to the use of alcohol or habituation or active dependency
10 on or addiction to the use of any kind of controlled substance or
11 narcotic drug or failure to comply with a treatment program or an
12 aftercare program entered into under the Licensee Assistance
13 Program established pursuant to section 71-172.01;

14 (4) Conviction of a misdemeanor or felony under state
15 law, federal law, or the law of another jurisdiction and which, if
16 committed within this state, would have constituted a misdemeanor
17 or felony under state law and which has a rational connection with
18 the applicant's, licensee's, certificate holder's, or registrant's
19 fitness or capacity to practice the profession;

20 (5) Practice of the profession (a) fraudulently, (b)
21 beyond its authorized scope, (c) with manifest incapacity, (d) with
22 gross incompetence or gross negligence, or (e) in a pattern of
23 negligent conduct. Pattern of negligent conduct ~~shall mean~~ means a
24 continued course of negligent conduct in performing the duties of
25 the profession;

26 (6) Practice of the profession while the ability to
27 practice is impaired by alcohol, controlled substances, narcotic
28 drugs, physical disability, mental disability, or emotional

1 disability;

2 (7) Physical or mental incapacity to practice the
3 profession as evidenced by a legal adjudication or a determination
4 thereof by other lawful means;

5 (8) Permitting, aiding, or abetting the practice of a
6 profession or the performance of activities requiring a license,
7 certificate, or registration by a person not licensed, certified,
8 or registered to do so;

9 (9) Having had his or her license, certificate, or
10 registration denied, refused renewal, limited, suspended, or
11 revoked or having had such license, certificate, or registration
12 disciplined in any other manner in accordance with section 71-155
13 by another state or jurisdiction to practice the particular
14 profession involved, based upon acts by the applicant, licensee,
15 certificate holder, or registrant similar to acts described in this
16 section. A certified copy of the record of denial, refusal of
17 renewal, limitation, suspension, or revocation of a license,
18 certificate, or registration or the taking of other disciplinary
19 measures against it by another state or jurisdiction shall be
20 conclusive evidence;

21 (10) Unprofessional conduct;

22 (11) Use of untruthful or improbable statements or
23 flamboyant, exaggerated, or extravagant claims, concerning such
24 licensee's, certificate holder's, or registrant's professional
25 excellence or abilities, in advertisements;

26 (12) Conviction of fraudulent or misleading advertising
27 or conviction of a violation of the Uniform Deceptive Trade
28 Practices Act;

1 (13) Distribution of intoxicating liquors, controlled
2 substances, or drugs for any other than lawful purposes;

3 (14) Willful or repeated violations of the Uniform
4 Licensing Law or the rules and regulations of the department
5 relating to the licensee's, certificate holder's, or registrant's
6 profession, sanitation, quarantine, or school inspection;

7 (15) Unlawful invasion of the field of practice of any
8 profession mentioned in the Uniform Licensing Law which the
9 licensee, certificate holder, or registrant is not licensed,
10 certified, or registered to practice;

11 (16) Failure to comply with sections 71-604, 71-605, and
12 71-606 relating to the signing of birth and death certificates;

13 (17) Violation of the Uniform Controlled Substances Act
14 or any rules and regulations adopted pursuant to the act;

15 (18) Purchasing or receiving any prescription drug from
16 any source in violation of the Wholesale Drug Distributor Licensing
17 Act;

18 (19) Violation of the Emergency Box Drug Act;

19 (20) Failure to file a report required by section 71-168;

20 (21) Failure to disclose the information required by
21 section 71-1,314.01; ~~or~~

22 (22) Failure to disclose the information required by
23 section 71-1,319.01; or

24 (23) Performing any procedure or prescribing any therapy
25 which, by the standards of acceptable and prevailing practices,
26 would constitute experimentation on a human subject without first
27 obtaining full, informed, and written consent.

28 A license, certificate, or registration to practice a

1 profession may also be refused renewal or revoked when the
2 licensee, certificate holder, or registrant is guilty of practicing
3 such profession while his or her license, certificate, or
4 registration to do so is suspended or is guilty of practicing such
5 profession in contravention of any limitation placed upon his or
6 her license, certificate, or registration.

7 This section shall not apply to revocation for nonrenewal
8 as set out in section 71-110, subsection (1) of section 71-149, and
9 section 71-161.10.

10 Sec. 3. For purposes of sections 71-147 and 71-148, the
11 use of an alternative medical treatment shall not in and of itself
12 constitute unprofessional conduct. Sections 71-147 and 71-148
13 shall not be construed to prevent a licensee's use of an
14 alternative medical practice which is within the scope of practice
15 of the licensee and which effectively treats human disease, pain,
16 injury, deformity, or physical condition. This section only
17 applies to individuals licensed to practice medicine and surgery
18 pursuant to the Uniform Licensing Law.

19 Sec. 4. (1) For purposes of subdivision (23) of section
20 71-147, a physician may provide an alternative medical treatment to
21 a patient if:

22 (a) There is no reasonable basis to conclude that the
23 treatment poses a greater risk than the generally recognized or
24 prevailing treatment; and

25 (b) The patient has been informed in writing that the
26 treatment has not been approved, certified, or licensed for use as
27 a medical treatment for the condition of the patient.

28 (2) Prior to the administration of an alternative medical

1 treatment:

2 (a) The physician must provide the patient with a written
3 statement informing the patient of the nature of the treatment
4 including:

5 (i) Contents and methods;

6 (ii) Anticipated benefits;

7 (iii) Reasonably foreseeable side effects that may
8 result;

9 (iv) Results of past applications of such treatments; and

10 (v) Any other information necessary to meet the
11 requirements of informed consent; and

12 (b) The patient must sign a statement that he or she:

13 (i) Has been provided a written statement fully informing
14 him or her about the alternative medical treatment; and

15 (ii) Desires such treatment.

16 Sec. 5. Section 71-155, Reissue Revised Statutes of
17 Nebraska, is amended to read:

18 71-155. The proceeding under section 71-150 shall be
19 summary in its nature and triable as an equity action and shall be
20 heard by the Director of Regulation and Licensure or by a hearing
21 officer designated by the director under rules and regulations of
22 the department. Affidavits may be received in evidence in the
23 discretion of the director or hearing officer. The department
24 shall have the power to administer oaths, to subpoena witnesses and
25 compel their attendance, and to issue subpoenas duces tecum and
26 require the production of books, accounts, and documents in the
27 same manner and to the same extent as the district courts of the
28 state. Depositions may be used by either party. Upon the

1 completion of any hearing held under this section, the director
2 shall, if the petition is brought with respect to subdivision ~~(15)~~
3 (1)(o) of section 71-148, make findings as to whether the
4 licensee's conduct was necessary to save the life of a mother whose
5 life was endangered by a physical disorder, physical illness, or
6 physical injury, including a life-endangering physical condition
7 caused by or arising from the pregnancy itself, and shall have the
8 authority through entry of an order to exercise in his or her
9 discretion any or all of the following powers, irrespective of the
10 petition:

11 (1) Issue a censure or reprimand against the licensee,
12 certificate holder, or registrant;

13 (2) Suspend judgment;

14 (3) Place the licensee, certificate holder, or registrant
15 on probation;

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

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

24 (6) Enter an order of suspension of the license,
25 certificate, or registration;

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

28 (8) Dismiss the action.

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

10 The director shall not enter an order of revocation or
11 suspension or deny a license to a person otherwise qualified to
12 practice medicine or surgery under the Uniform Licensing Law solely
13 because the person's practice of a therapy is an alternative
14 medical treatment or such practice departs from the standards of
15 acceptable and prevailing practice of a profession unless the
16 director can establish, by clear and convincing evidence, that the
17 alternative treatment is generally not appropriate or has a safety
18 risk greater than the acceptable and prevailing treatment.

19 The licensee, certificate holder, or registrant shall not
20 engage in the practice of a profession after a license,
21 certificate, or registration to practice such profession is revoked
22 or during the time for which it is suspended. If a license,
23 certificate, or registration is suspended, the suspension shall be
24 for a definite period of time to be set by the director. The
25 director may provide that the license, certificate, or registration
26 shall be automatically reinstated upon expiration of such period,
27 reinstated if the terms and conditions as set by the director are
28 satisfied, or reinstated subject to probation or limitations or

1 conditions upon the practice of the licensee, certificate holder,
2 or registrant. If such license, certificate, or registration is
3 revoked, such revocation shall be for all times, except that at any
4 time after the expiration of two years, application may be made for
5 reinstatement pursuant to section 71-161.04.

6 Nothing in this section shall be construed to prevent
7 disciplinary action against a person engaged in the practice of
8 medicine and surgery for practicing medicine in violation of the
9 Uniform Licensing Law.

10 Sec. 6. Original section 71-155, Reissue Revised
11 Statutes of Nebraska, and sections 71-101 and 71-147, Revised
12 Statutes Supplement, 1998, are repealed.