

LEGISLATIVE BILL 427

Approved by the Governor May 4, 1979

Introduced by Public Health and Welfare Committee, Cullan, 49, Chan.; Kennedy, 21; Clark, 47; R. Maresh, 32; Goodrich, 20

AN ACT to amend sections 71-108, 71-109, 71-111, 71-117 to 71-119, 71-124.01, 71-125, 71-128, and 71-131 to 71-133, Reissue Revised Statutes of Nebraska, 1943, sections 71-110, 71-112, 71-114, 71-121, 71-122, and 71-138, Revised Statutes Supplement, 1978, and section 71-113, Revised Statutes Supplement, 1978, as amended by section 1, Legislative Bill 297, Eighty-sixth Legislature, First Session, 1979, relating to professional and occupational licenses; to change the name of a board; to provide for lay board members as prescribed; to change provisions relating to examining boards; to provide duties; to change provisions relating to examinations as prescribed; and to repeal the original sections.

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

Section 1. That section 71-108, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

71-108. The name, age, nativity, location or post-office address, school and date of graduation, date of examination and ratings or grades received, and date of license, if one is issued, of all applicants for examination in the several professions regulated by this act, shall be entered in a book kept in the office of the Department of Health, to be known as the registry record. A separate registry record shall be kept for each profession, and the names of applicants in that profession shall be given consecutive numbers, and all other records relating to that application or license granted thereunder shall be given the same number. A card-index list shall also be kept of those granted licenses in the several professions. Applications for license shall be upon forms prepared by the department, and the completed applications shall be kept as a part of the permanent files of the department. All applications based on licenses granted in other states shall be received upon forms prepared by the department and entered in the registry records as nearly as may be in the same form as are those applying for examinations. In addition, the date of license and the length of time of

practice in the other state shall be given and entered. The data in any or all of such records may be maintained in computer files, placed upon microfilm, or stored in a similar form. All of such records, in whatever form, shall be available for public inspection, as defined by regulations of the department. ~~shall be open to public inspection under proper regulations by the department.~~ Investigational records, reports, and files of any kind shall not be a public record until such time as formal charges are filed by the department, the Attorney General, or the appropriate county attorney in the manner outlined in sections 71-147 to 71-172 and sections 71-1,156 to 71-1,167, Reissue Revised Statutes of Nebraska, 1943, and amendments thereto.

Sec. 2. That section 71-109, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

71-109. Every person holding a certificate under the laws of this state authorizing such person to ~~practice any system or mode of treating the sick or afflicted in this state~~ medicine and surgery, osteopathy, chiropractic, dentistry, dental hygiene, podiatry, optometry, physical therapy, audiology or speech pathology, or veterinary medicine and surgery, whether practicing now or hereafter licensed to practice, shall have it registered in the office of the county clerk of the county where such person is practicing, proposes to practice, or maintains his or her principal place of business. Registration shall be made in a register kept by the county clerk for such purpose. The register shall be alphabetically arranged and show the following information in regard to the certificate and the person to whom the certificate is issued: (1) Name; (2) residence; (3) form of certificate issued; (4) scope of practice permitted thereunder, as prescribed on the certificate so registered; (5) number and date of the certificate; and (6) the date of registration of the certificate. Any person engaging in such practice without having registered such license, as herein required, shall be guilty of practicing without a license and subject to the penalties of this act. The county clerk shall keep, in a book provided for that purpose and furnished by the Department of Health, a complete list of the certificates so recorded, with the date of the record. Such book shall be open to public inspection during office hours. The county clerk shall, within twenty-four hours after recording of a license, forward an official notice of such recording to the department; Provided, that any practitioner, having lost his an original certificate, may present a copy of the record of such certificate or his or her annual renewal card in

lieu of the original certificate. Such records may be maintained by the county clerk by means of microfilming.

Sec. 3. That section 71-110, Revised Statutes Supplement, 1978, be amended to read as follows:

71-110. (1) The different licenses to practice a profession shall ~~expire on the first day of the several months as hereinafter indicated. These licenses shall be renewed annually upon request of the licensee without examination.~~ The annual expiration date in the different professions shall be as follows: January, pharmacy; February, embalming and funeral directing; March, dentistry and dental hygiene; April, podiatry and veterinary medicine and surgery; August, chiropractic and optometry; September, osteopathy; ~~and audiology and speech pathology~~; October, medicine and surgery; and November, physical therapy; and December, audiology and speech pathology. The request for renewal need not be in any particular form, and shall be accompanied by the legal fee. Such fee shall be paid not later than the date of the expiration of such license; Provided, that while actively engaged in the military service of the United States, as defined in the Soldiers' and Sailors' Civil Relief Act of 1940 as amended, persons licensed to practice the professions above named shall not be required to pay the annual renewal license fee.

(2) At least thirty days before the expiration of ~~his a~~ license, as set forth in subsection (1) of this section, the Department of Health shall notify each licensee by a letter addressed to ~~him~~ such licensee at his or her last place of residence as noted upon its records. Any licensee, who fails to pay the renewal fee, on or before the date of expiration of his or her license, shall be given a second notice in the same manner advising ~~him~~ such person (a) of ~~his the~~ failure to pay, (b) that ~~his the~~ license on that account has expired, (c) that the department will suspend action for thirty days following the date of expiration, (d) that upon the receipt of the annual renewal fee, together with an additional fee of one dollar, within that time, no order of revocation will be entered, and (e) that upon the failure to receive the amount then due and one dollar in addition to the regular renewal fee, as provided by subsection (1) of this section, an order of revocation will be entered.

(3) Any licensee who allows his a license to lapse by failing to renew the same, as provided in subsections (1) and (2) of this section, may be reinstated upon the recommendation of the board of examiners for his such profession and the payment of the

regular and additional renewal fees then due.

Sec. 4. That section 71-111, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

71-111. For the purpose of giving examinations to applicants for license to practice the professions for which license is required by this act, the Department State Board of Health shall appoint a board of examiners for each of said professions.

Sec. 5. That section 71-112, Revised Statutes Supplement, 1978, be amended to read as follows:

71-112. The boards of examiners provided in section 71-111 shall be designated as follows: For medicine and surgery, Examiners in Medicine and Surgery; for osteopathy, Examiners in Osteopathy; for chiropractic, Examiners in Chiropractic; for dentistry and dental hygiene, Examiners in Dentistry; for optometry, Examiners in Optometry; for physical therapy, Examiners in Physical Therapy; for pharmacy, Examiners in Pharmacy; for audiology and speech pathology, Examiners in Audiology and Speech Pathology; for embalming and funeral directing, Examiners in Embalming and Funeral Directing; for podiatry, Examiners in Podiatry; and for veterinary medicine and surgery, Examiners in Veterinary Medicine.

Sec. 6. That section 71-113, Revised Statutes Supplement, 1978, as amended by section 1, Legislative Bill 297, Eighty-sixth Legislature, First Session, 1979, be amended to read as follows:

71-113. (1) Each board of examiners shall consist of three members, except that in audiology and speech pathology the board shall consist of four members, in dentistry the board shall consist of seven members and in medicine and surgery the board shall consist of six members. Notwithstanding any other provision of law, the State Board of Health may appoint one additional member, who shall be a lay member, to any board of examiners in accordance with the provisions of section 71-114.

(2) Membership on the Board of Examiners in Audiology and Speech Pathology shall consist of two members who are audiologists and two members who are speech pathologists. All members shall be qualified to be licensed in accordance with the provisions of this act. The members appointed to the initial board shall be licensed not later than six months after being appointed to the board. If for any reason a member cannot be

licensed within such time period, a new member shall be appointed.

Sec. 7. That section 71-114, Revised Statutes Supplement, 1978, be amended to read as follows:

71-114. (1) Every professional examiner shall be and have been actively engaged in the practice of his or her profession in the State of Nebraska, under a license issued in this state, for a period of five years just preceding his or her appointment, except for the members of boards of examiners for professions coming within the scope of sections 71-101 to 71-1,152, for the first time and for a period of five years thereafter. Examiners appointed during such period shall be required to meet the minimum qualifications for licensure in the profession in this state and shall, insofar as possible, meet the requirements as to years of practice in this state otherwise provided by this section.

(2) A lay member of a board of examiners shall be of the age of legal majority and shall have been a resident of the State of Nebraska for a least five years immediately prior to appointment to the board. Such a lay member shall never serve in a capacity to judge professional competence and should be a representative of consumer viewpoints.

~~(2)~~ (3) Each member of the Board of Examiners in Audiology and Speech Pathology shall have been a resident of the State of Nebraska for at least one year immediately prior to his appointment, and shall also have been engaged in rendering services to the public in audiology or speech pathology for at least three years immediately prior to his appointment.

Sec. 8. That section 71-117, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

71-117. The regular state association or society, or its managing board, for each profession may submit each year to the Department State Board of Health a list of five persons of recognized ability in such profession who have the qualifications prescribed for examiners for that particular profession; Provided, each professional member of the Board of Examiners in Pharmacy shall be the recipient of a diploma of graduation from an accredited school or college of pharmacy. If such a list is submitted, the department state board, in making an appointment of a professional person to the board of examiners for such profession, shall consider the names on such list, and may appoint one of the persons so

named. Any person who desires to be considered by the state board for an appointment to a board of examiners and who possesses the necessary qualifications for such appointment may apply on a form provided by the state board any time prior to October 1 of each year. The State Board of Health shall consider such applications and may appoint any qualified person so applying to the board of examiners, even though such person is not named on a list submitted by the association or society.

Sec. 9. That section 71-118, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

71-118. The Department State Board of Health shall have power to remove from office at any time any member of a board of examiners, after a public hearing pursuant to the provisions of Chapter 84, article 9, for physical or mental incapacity to carry out the duties of a board member, for continued neglect of duty, for incompetency, for acting beyond the individual member's scope of authority, for malfeasance in office, for any cause for which a professional license in the profession involved may be suspended or revoked under the provisions of section 71-147 or 71-148, Reissue Revised Statutes of Nebraska, 1943, or section 71-1,101, Revised Statutes Supplement, 1978, or for a lack of licensure in the profession involved, or for unprofessional conduct as that term is defined in this act.

Sec. 10. That section 71-119, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

71-119. Any vacancy in the membership of a board of examiners caused by death, resignation, removal, or otherwise, shall be filled for the period of the unexpired term in the same manner as original appointments are made. ;--Provided,--the--Department--of Health--shall--select--from--the--last--list--submitted.

Sec. 11. That section 71-121, Revised Statutes Supplement, 1978, be amended to read as follows:

71-121. The Department of Health shall, as far as practicable, provide by rules for the conducting of the business of several boards of examiners by mail. Any official action or vote of the members of a board of examiners taken by mail shall be preserved in the records of the department and shall be embodied in the proper minute book by the Director of the Bureau of Examining Boards. At least a majority of each board of examiners shall be present at any examination given in that

profession, except for examinations in audiology and speech pathology. The board members who are audiologists shall be present at any examination in audiology, and the board members who are speech pathologists shall be present at any examination in speech pathology.

Sec. 12. That section 71-122, Revised Statutes Supplement, 1978, be amended to read as follows:

71-122. Each member of a board of examiners, except members of the Board of Examiners in Medicine and Surgery, and the Board of Examiners in Dentistry, shall, in addition to necessary traveling and hotel expenses, receive a per diem for each day actually engaged in the discharge of his or her duties, including compensation for the time spent in traveling to and from the place of conducting the examination, and, with the exception of board members who are lay persons, for a reasonable number of days for the preparation of examination questions and the reading of the answer papers, in addition to the time actually spent in conducting the examination; Provided, that traveling and hotel expenses shall not exceed the amounts allowed by state administrative departments. The compensation per day in the several professions shall be as follows: (1) in osteopathy, chiropractic, embalming and funeral directing, and pharmacy, fifteen dollars; (2) in podiatry and physical therapy, ten dollars; (3) in audiology and speech pathology, twenty dollars; and (4) in optometry, thirty dollars; Provided, there shall not be paid for examiners' compensation and expenses a greater sum than is received in fees from the applicants taking the examination in any particular profession.

Sec. 13. That section 71-124.01, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

71-124.01. ~~When any board of examiners, as designated in section 71-142,~~ Whenever the department deems it necessary to appoint an inspector or investigator to assist it in performing its duty, such board the department may appoint a person who is actively engaged in his such profession or any other qualified person who has been trained in investigational procedures and techniques to serve as such inspector or investigator with the consent and approval of the Director of the Department of Health board of examiners of the profession involved when applicable.

Sec. 14. That section 71-125, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

71-125. Any person desiring to take the examination for a license to practice a profession, shall make application to the Department of Health at least fifteen thirty days before the prior to examination or licensure on a form provided by the department, and sworn to by the applicant. Such application shall be accompanied by the examination fee, and such documents and affidavits as are necessary to show the eligibility of the candidates to take such examination. All applications shall be in accordance with the rules of the department; ~~provided---~~ ~~however,~~ except that those graduating from accredited professional schools in Nebraska less than fifteen thirty days preceding the date set for their examination may file their application, accompanied by a statement from one authorized to speak, that the applicant has completed and successfully passed his any examinations and in due time will receive his a diploma. Upon the payment of his the applicable fee, his the application may thereupon be received, but before taking the examination he the applicant must file a photostatic copy of his or her diploma.

Sec. 15. That section 71-128, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

71-128. The Department of Health shall prepare and keep up to date a list of accredited colleges in which are taught the professions which are regulated by this act. The board of examiners shall make recommendations relative thereto, and shall approve the list for the profession for which it gives license examinations. No school shall be accredited without the formal action of the department and the board of examiners for the profession which that school teaches. Any professional school or college whose graduates or students desire to take the Nebraska State Board examination, shall supply the department with the necessary data to allow the board of examiners and the department to determine whether that school should be accredited. The Department of Health may adopt any nationally developed standard examination as constituting part of or all of the Nebraska state board examination for any of the professions which are regulated by this act, so long as such examination is approved by the board of examiners for the profession involved and certified by such board as being a part of or all of that board's licensing examination.

Sec. 16. That section 71-131, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

71-131. (1) ~~The Department of Health shall prepare rules regulating examinations and grading of examination papers. In doing this, it shall take the advice of any interested board of examiners. In the absence of any definite provision relating to any particular profession, all applicants shall be required to attain an average grade of seventy-five per cent, and not to fall below a grade of sixty per cent in any one subject. When an applicant fails below sixty per cent in but two subjects, he may take those two over without charge at any time within fourteen months. If an applicant fails below sixty per cent in more than two subjects, or if he failed to attain an average grade of seventy-five per cent in all subjects, he shall take the entire examination over. In the absence of any specific requirement or provision relating to any particular profession:~~

(a) The Department of Health may adopt and promulgate rules and regulations pertaining to the grading of examination papers;

(b) An examinee must obtain an average grade of seventy-five per cent;

(c) An examinee must obtain a grade of sixty per cent in each subject in which examined; and

(d) An examinee who fails to comply with subdivisions (b) and (c) of this subsection may take the entire examination over without charge at any time within fourteen months, except that in the case in which a national standardized examination is utilized by any examining board, which requires the payment of a fee to purchase such examination, the Department of Health shall require the applicant to pay the appropriate examination fee.

(2) In pharmacy, the Board of Examiners in Pharmacy shall prepare rules regulating examinations and grading of examination papers. In the absence of any definite provision relating to grades established by rule of such board, all applicants shall be required to attain an average grade of seventy-five per cent, and not to fall below a grade of sixty per cent in any one subject, except the examination in practical pharmacy, in which a grade of seventy-five per cent must be attained. When an applicant falls below sixty per cent in but two subjects, except the examination in practical pharmacy, he the applicant may take those two over without charge at any time within fourteen months at any regular session of such board held for the purpose of giving examinations, or at the first regular session of the board held for the

purpose of giving examinations thereafter, if not held within that time. If an applicant falls below sixty per cent in more than two subjects, except the examination in practical pharmacy, or if he the applicant fails to attain an average grade of seventy-five per cent in all subjects and a grade of seventy-five per cent in the examination in practical pharmacy, he the applicant shall take the entire examination over, and may do this without charge at any time within fourteen months at any regular session of the board held for the purpose of giving examinations, or at the first regular session of the board held for the purpose of giving examinations thereafter if not held within that time. Notwithstanding any provision of this section, whenever the Board of Examiners in Pharmacy utilizes a national standardized examination, which requires the payment of a fee to purchase such examination, the Department of Health shall require the applicant to pay the appropriate examination fee.

(3) In medicine and surgery the passing grade shall be determined by the department upon recommendation of the Board of Examiners in Medicine and Surgery. Fees for reexamination shall be determined by the department upon recommendation of the Board of Examiners in Medicine and Surgery.

Sec. 17. That section 71-132, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

71-132. All examinations in theory shall be in writing, and the identity of persons taking the same shall not be disclosed upon the examination paper in such a way as to enable the board of examiners to know by whom written. In examinations in practice, the identity of the candidate shall also be concealed as far as possible, and the board members shall in every way endeavor to carry out the spirit of this section. The Department of Health may adopt rules and regulations regarding identification and grading of machine scored examinations.

Sec. 18. That section 71-133, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

71-133. The practical work, required in connection with any examination regulated under this act, shall be given by at least one-third of the members of the board giving such examination. In dentistry, the final practical examination in operative and prosthetic dentistry may be given at the infirmary of each of the

dental colleges, schools or departments, legally conducted in the State of Nebraska of which the applicant is a graduate. Regional practical examinations may be used to meet the requirement of a final practical examination in operative and prosthetic dentistry upon the recommendation of the Board of Examiners in Dentistry and the subsequent approval of the department.

Sec. 19. That section 71-138, Revised Statutes Supplement, 1978, be amended to read as follows:

71-138. (1) All question and answer papers connected with any examination for a license shall be filed with the Department of Health and preserved for two years as a part of its records, during which time such papers shall be open to inspection of an applicant or of the superintendent of his training school or other proper representative, under regulations by the department. In medicine and surgery, the questions and results shall be available for two years for review by any person. All question and answer papers or sheets, or photostatic or other copies of such answer papers or sheets, connected with any examination for a license shall be filed with the Department of Health and preserved for two years as a part of its records or, whenever national standardized examinations, governed by security considerations, are utilized, they shall be available from the developing testing service for a period of two years, during which time such answer papers or sheets shall be open to inspection by an applicant or by the dean of his or her college or training school or by any other proper representative of either of such college or training school as determined by regulations which the department is hereby authorized to adopt. Any national standardized machine graded or computer scored examination questions or answers which are protected by security agreements, copyright provisions, or departmental or state contractual agreements for use shall not be required to be on file with the department, but must be available for a period of two years, upon demand, from any testing service utilized, at the discretion of the department or upon order of a court of competent jurisdiction.

(2) When the Board of Examiners in Audiology and Speech-Pathology any board of examiners a national examination, has designated the use of a national standardized examination, the papers connected with the examination shall be filed and maintained for at least two years by the board in the manner outlined in subsection (1) of this section.

Sec. 20. That original sections 71-108, 71-109, 71-111, 71-117 to 71-119, 71-124.01, 71-125, 71-128, and

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71-131 to 71-133, Reissue Revised Statutes of Nebraska, 1943, sections 71-110, 71-112, 71-114, 71-121, 71-122, and 71-138, Revised Statutes Supplement, 1978, and section 71-113, Revised Statutes Supplement, 1978, as amended by section 1, Legislative Bill 297, Eighty-sixth Legislature, First Session, 1979, are repealed.